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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as Boston Security Token Exchange LLC

May 25, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 12, 2021, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (“Exchange Act”),³ BOX Exchange LLC (“BOX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (“BSTX”). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of “Securities,” which would be equity securities that meet BSTX listing standards and for which certain information regarding orders and executions on BSTX would be recorded and disseminated on a proprietary market data feed that BSTX operates using a proprietary blockchain system (“BSTX Market Data Blockchain”). The proposed additions to the Exchange’s Rules setting forth new Rule Series 17000 – 29000 have been submitted with the proposal as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange’s rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, have been submitted with the proposal as Exhibits 3A through 3L.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM-8050-3, 11010, 11030 and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange's Rules.⁴

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of certain equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system ("BSTX System") for the trading of certain equity securities that would be considered "Securities" under the proposed rules. The "Securities"⁵ under the

⁴ The Exchange's Rules can be found on the Exchange's public website: <https://boxoptions.com/regulatory/rulebook-filings/>.

⁵ As discussed further below, BSTX proposes to use the term "Security" to refer to

proposed rules would be equity securities that meet BSTX listing standards and that trade on the BSTX System. The Exchange would operate the BSTX Market Data Blockchain, which would record certain information regarding orders and transactions occurring on BSTX with respect to Securities. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (“ETPs”) that wish to issue their registered securities as Securities. Securities would trade as NMS stock.⁶ The Exchange is not proposing rules that would support its extension of unlisted trading privileges (“UTP”) to other NMS stock, and accordingly the Exchange does not intend to extend any such UTP in connection with this proposal. The Exchange would therefore only trade Securities listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of UTP to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

Guide to the Scope of the Proposed Rule Change

The proposal for trading of Securities through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (“BSTX Rules”). In addition, the Exchange plans to submit a separate proposed rule change pertaining to BSTX’s corporate governance documents. To support the trading of Securities through BSTX, certain conforming changes are proposed to existing BOX

BSTX-listed securities to distinguish them from other securities issued by an issuer that the issuer does not list on BSTX.

⁶ 17 CFR 242.600(b)(48).

Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 29000.⁷ Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000 – General Provisions of BSTX;
- Section 18000 – Participation on BSTX;
- Section 19000 – Business Conduct for BSTX Participants;
- Section 20000 – Financial and Operational Rules for BSTX Participants;
- Section 21000 – Supervision;
- Section 22000 – Miscellaneous Provisions;
- Section 23000 – Trading Practice Rules;
- Section 24000 – Discipline and Summary Suspension;
- Section 25000 – Trading Rules;
- Section 25200 – Market Making on BSTX;
- Section 26000 – BSTX Listing Rules Other Than for Exchange Traded Products;
- Section 27000 – Suspension and Delisting;
- Section 27100 – Guide to Filing Requirements;

⁷ The proposed changes to BOX Rules and the proposed BSTX Rules have been submitted with this proposal as Exhibits 5B and 5A, respectively.

- Section 27200 – Procedures for Review of Exchange Listing Determinations;
and
- Section 28000 – Trading and Listing of Exchange Traded Products;
- Section 29000 – Dues, Fees, Assessments and Other Charges.

Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Securities

The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (“tZERO”) and BOX Digital Markets LLC (“BOX Digital”) announced a joint venture to facilitate the trading of Securities on the Exchange.⁸ As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture will be the subject of a separate proposed rule change that the Exchange will submit to the Commission.

BSTX Would Be a Facility of BOX That Would Support Trading in the New Asset Class of Securities for BOX

BSTX would operate as a facility⁹ of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX’s operations would be

⁸ See tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), <https://www.businesswire.com/news/home/20180619005897/en/tZERO-and-BOX-Digital-Markets-Sign-Deal-to-Create-Joint-Venture>.

⁹ 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that “the term

subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.¹⁰ Currently, BOX functions as an exchange only for standardized options. At the time that BSTX commences operations it would support trading in Securities that are equity securities (including certain ETPs), as described in more detail below. Accordingly, the proposal represents a new asset class for BOX, and the discussion below sets forth the changes and additions to the Exchange's Rules to support the trading of equity securities as Securities on BSTX.

The Exchange proposes to use the term "Security"¹¹ to describe a NMS stock trading on the BSTX system. The legal significance, therefore, of a "Security" is that it would be an equity security that is approved for listing on BSTX and that trades on the BSTX System. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a "Security" under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System.¹²

Securities Would Be NMS Stocks

'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." Because BSTX will share certain systems of the Exchange, BSTX would be a facility of the Exchange.

¹⁰ 15 U.S.C. 78f; 15 U.S.C. 78s.

¹¹ The Exchange proposes to define the term "Security" to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. See proposed Rule 17000(a)(31).

¹² Id.

The Securities would qualify as NMS stocks pursuant to Regulation NMS,¹³ which defines the term “NMS security” in relevant part to mean “any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan”¹⁴ The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of Security quotation and transaction reporting.¹⁵ The term “NMS stock” means “any NMS security other than an option”¹⁶ and therefore Securities traded on BSTX would be classified as NMS stock.

Securities would meet the definition of NMS stock and would trade, clear, and settle in the same manner as all other NMS stocks traded today. As described in further detail below, the operation of the BSTX Market Data Blockchain would in no way modify or alter market participants’ obligations under Regulation NMS.

BSTX Would Support Trading of Registered Securities

All Securities traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act¹⁷ and Section 6 of the Securities Act of 1933 (“Securities Act”).¹⁸ BSTX would not support trading of Securities offered under an exemption from registration for public offerings, with the

¹³ 17 CFR 242.600 through .613.

¹⁴ 17 CFR 242.600(b)(47).

¹⁵ 17 CFR 242.601(a)(1). The Rule states in relevant part that “every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities”

¹⁶ 17 CFR 242.600(b)(47).

¹⁷ 15 U.S.C. 78l.

¹⁸ 15 U.S.C. 77f.

exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

Issuance and Clearance and Settlement of Securities

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with Securities. All transactions in Securities would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (“DTC”) and that DTC would serve as the securities depository¹⁹ for such Securities. It is also expected that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (“NSCC”) for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange-traded equity securities. Importantly, for purposes of NSCC’s clearing activities and DTC’s settlement activities in respect of the Securities, the relevant Securities would be cleared and settled

¹⁹ 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term “clearing agency” to include “any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.”

by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock.

The operation of the BSTX Market Data Blockchain will have no impact or effect on the manner in which a Security clears and settles. The BSTX Market Data Blockchain would be implemented through the operation of the proposed BSTX Rules and would occur separate and apart from the clearance and settlement process. The Security would be an ordinary equity security for NSCC's and DTC's purposes. The BSTX Market Data Blockchain would be a separate set of market data that uses distributed ledger technology to record certain order and transaction information regarding orders and transactions in Securities on BSTX.

Issuance of Equity Securities Eligible to Become a Security

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all Securities traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the Securities will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX would be a facility of a national securities exchange, all Securities would be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as Securities on BSTX would be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will

enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as Securities) will thereafter commence on BSTX.

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX as Securities.

BSTX does not intend for Securities listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer.²⁰ If an issuer sought to list securities on BSTX that are not a separate class of an issuer's securities, BSTX does not intend to approve such a class of security for listing on BSTX as a Security, pursuant to BSTX's authority under BSTX Rule 26101. At the commencement of BSTX's operations, certain equities (including ETPs) would be eligible for listing as Securities. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Securities), 26105 (Warrant Securities) and the Rule 28000 Series (Trading and Listing

²⁰ The Exchange notes that distinct classes of securities issued by an issuer that are Securities would not be fungible with another class of securities of the same issuer because no class of an issuer's securities is fungible with a separate class of its securities – otherwise they would be the same class of security. To the extent that two classes of an issuer's shares had identical voting and economic rights but were registered with the Commission as separate classes (e.g., Class A shares and Class B shares), the two classes of shares could be economically fungible with one another insofar as they convey the same economic and beneficial rights and interests to investors, but this would not mean that ownership of a Class A share is the same as ownership of a Class B share notwithstanding that each class provides the same economic benefits. In any case, nothing herein proposes any change to the existing framework for different classes of securities.

of Exchange Traded Products), which would be part of BSTX's listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which Securities would be held in "street name" with DTC.²¹ BSTX Rule 26137 would require that for an issuer's security to be eligible to be a Security, BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.²² In practice, BSTX Rule 26137 requires the Security to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.²³

²¹ The term "street name" refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26136 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

²² Proposed BSTX Rule 26137 is based on current NYSE Rule 777.

²³ See Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26135 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.²⁴ Proposed BSTX Rule 26135 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (“FINRA”).²⁵ Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and “thereby reduce settlement risk” in the U.S. national market system.²⁶

Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (“CNS”) system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is

²⁴ FINRA is currently the only national securities association registered with the SEC.

²⁵ See e.g., FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

²⁶ These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. See Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR-NASD-95-24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR-NYSE-95-19).

the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each Security transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a Security transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a Security transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC ("IEX"), which, in turn, is consistent with the rules of other equities exchanges.²⁷

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which Securities that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's

²⁷ See IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); see also Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

operations, Securities would be securities that have been made eligible for services by DTC, including book-entry settlement services.

Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in Securities. Security trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. As noted above in connection with the description of proposed BSTX Rule 25140, the Exchange expects that at the commencement of operations by BSTX it would transmit confirmed trade details to NSCC regarding Security trades that occur on BSTX and that NSCC would be the registered clearing agency that clears Security trades.

As described in greater detail below in Part II.I, the Exchange is also proposing that BSTX Participants would be able to include parameters in orders submitted to BSTX to indicate a preference to use faster settlement cycles that are currently available through NSCC and DTC under certain circumstances. BSTX believes that allowing BSTX Participants to use these faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities due to faster settlement. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves

a broker-dealer.²⁸ Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The BSTX Market Data Blockchain

BSTX will make available to BSTX Participants certain market data related to trading activity occurring on BSTX through the use of a private, permissioned blockchain maintained by the Exchange. As described further below, a BSTX Participant would have the ability to see detailed information about its trading activity on BSTX but only anonymized information with respect to the trading activity of other BSTX Participants. BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain. The Exchange believes that the information made available on the BSTX Market Data Blockchain would be generally similar to Daily Trade and Quote (“TAQ”) data made available by New York Stock Exchange LLC except that the Exchange would use distributed ledger or “blockchain” technology to record such information, a BSTX Participant would be able to see non-anonymized information about its own trading activity on BSTX, and the market data would pertain only to trading activity on BSTX and not the broader market (e.g., an over-the-counter (“OTC”)²⁹ transaction in a Security reported to the consolidated tape).³⁰

²⁸ 17 CFR 240.15c6-1. Under SEC Rule 15c6-1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

²⁹ OTC in this context refers to trading occurring otherwise than on a national securities exchange.

³⁰ See e.g., NYSE, Daily TAQ Fact Sheet,

Background on Blockchain Technology

In general, a blockchain is essentially a ledger that can maintain digital records of assets, transactions, or other information. A blockchain's central function is to encode transitions or changes to the ledger. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition.

There are broadly two types of blockchains: (i) Public blockchains that are decentralized, open to anyone running the same protocol;³¹ and (ii) a private, permission-based blockchains where only those granted access may view or take other actions with respect to the blockchain.

BSTX Market Data Blockchain As a Private Permissioned Network

The BSTX Market Data Blockchain would operate as a private, permission-based blockchain accessible only to BSTX Participants. The Exchange would control all aspects of the BSTX Market Data Blockchain. Pursuant to proposed Rule 17020(b), each BSTX Participant would be assigned a BSTX Market Data Blockchain address that corresponds to the BSTX Participant's trading activity on BSTX. The Exchange will also issue login credentials to each BSTX Participant through which the BSTX Participant may access the BSTX Market Data Blockchain to see its order and transaction information on BSTX as well as certain anonymized market data from other BSTX Participants, as discussed further below.

https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

³¹ A "protocol" in this context generally means a set of rules governing the format of messages that are exchanged between the participants.

The BSTX Market Data Blockchain would generally operate by collecting information from two sources, which the Exchange would then translate into information capable of being recorded to the BSTX Market Data Blockchain. Specifically, the data inputs for the BSTX Market Data Blockchain would come from (i) the BSTX System³² to capture information such as executed transactions and (ii) each BSTX Participant's order/message information passing through the financial information exchange ("FIX") gateway through which all orders and messages pass in order to connect to the BSTX System. For example, if a BSTX Participant sends an order to buy 100 shares of Security XYZ, when that order is sent to the Exchange, the Exchange would capture this information as it passes through the FIX gateway in an automated process that results in the BSTX Participant being able to see that order on the BSTX Market Data Blockchain through its login credentials.

The BSTX Market Data Blockchain does not require any affirmative action on the part of a BSTX Participant in order for its information to be recorded to the BSTX Market Data Blockchain. Rather, the BSTX Market Data Blockchain captures trading activity that occurs on BSTX in the normal course and is made available to BSTX Participants as an additional resource that they may choose to use in their discretion in the same general manner that a market participant might use TAQ data.

Information Available on the BSTX Market Data Blockchain

As set forth in proposed Rule 17020(c), there are two types of information that would be available on the BSTX Market Data Blockchain: (i) A BSTX Participant's own

³² The "BSTX System" refers to the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(15).

order and transaction information related to its trading activity on BSTX (“Participant Proprietary Data”); and (ii) anonymized, general market data available to all BSTX Participants (“General Market Data”). With respect to Participant Proprietary Data, a BSTX Participant would be able to see the following information with respect to all orders and messages and executions submitted to and occurring on BSTX:

- (1) Symbol, side (buy/sell), limit price, quantity, time-in-force
- (2) Order type (e.g., limit order, ISO)
- (3) Order capacity (principal/agent)
- (4) Short/long sale order marking
- (5) Message type (e.g., order, modification, cancellation)
- (6) A unique identification number attributable to each order, execution, or other message (e.g., cancelation or modification)
- (7) Such other information regarding a BSTX Participant’s trading activity on BSTX as the Exchange may determine and set forth via Regulatory Circular.

Participant Proprietary Data would effectively contain a record of all of a BSTX’s Participant’s trading activity on BSTX. Participant Proprietary Data would only be available to the BSTX Participant from which such data derived. That is, a BSTX Participant would not have access to the Participant Proprietary Data of another BSTX Participant. As a result, no BSTX Participant would be provided with access to trading information of another BSTX Participant in a manner that would allow for reverse engineering of trading strategies or otherwise compromise the confidential nature of each BSTX Participant’s trading information. The Exchange proposes to allow for flexibility to provide additional Participant Proprietary Data to each BSTX Participant via

Regulatory Circular in order to provide the Exchange with the ability to enhance the content of Participant Proprietary Data based on feedback from BSTX Participants.

General Market Data is the second type of information that would be available on the BSTX Market Data Blockchain, which would consist of:

- (1) All orders, modifications, cancellations, and executions occurring on BSTX in an anonymized format.
- (2) Administrative data and other information from the Exchange (e.g., trading halts, or technical messages).
- (3) Such other anonymized trading activity or general information as the Exchange may determine and set forth via Regulatory Circular.

General Market Data is intended to allow BSTX Participants to be able to observe the BSTX Order Book, changes thereto, and executions occurring on BSTX in generally the same manner that a market participant can today see order and transaction information on an exchange by subscribing to an exchange's proprietary market data feed. The Exchange notes that the General Market Data that would be available on the BSTX Market Data Blockchain would be the same substantive information that would be available through the Exchange's proprietary market data feeds, so access to the BSTX Market Data Blockchain would not provide additional information that could not otherwise be obtained through the Exchange's proprietary market data feed.³³ The Exchange proposes to allow for flexibility to provide additional, anonymized trading activity or general information to BSTX Participants via Regulatory Circular in order to

³³ The BSTX Market Data Blockchain may include certain non-material information, such as a unique order identification number specific to the blockchain that would not be available through proprietary market data products.

provide the Exchange with the ability to enhance the content of General Market Data based on feedback from BSTX Participants or in the event that new data elements become relevant in the future.

General Market Data would be anonymized, meaning that a BSTX Participant would not be able to determine the identity of another BSTX Participant's orders, quotes, cancellations, or other messages. For the avoidance of doubt, the alphanumeric address assigned to each BSTX Participant to facilitate the BSTX Market Data Blockchain would not be visible as part of General Market Data.³⁴ As a result, there should not be cause for concern regarding potential trading information leakage or the ability to reverse engineer another BSTX Participant's trading strategies given the anonymous nature of General Market Data. BSTX Participants would generally have available to them via the BSTX Market Data Blockchain the same information they would have today with respect to other BSTX Participants trading activity in subscribing to an exchange's proprietary data feed.

The Exchange proposes to append timestamps to the information made available. Timestamps related to all information on the BSTX Market Data Blockchain would indicate the time to the microsecond at which an order posted to the BSTX Book or that the BSTX System took other action with respect to an order (e.g., effects a cancellation, execution, modification). Information would be posted to the BSTX Market Data Blockchain on a delayed basis of at least 5 minutes. As a result, the BSTX Market Data

³⁴ For example, in looking at General Market Data, BSTX Participant X would not be able to determine by name, address, or otherwise that a particular order, modification to an existing order, or executed transaction involved BSTX Participant Y or any other BSTX Participant.

Blockchain would not function as a substitute for real-time market data. A BSTX Participant would have the ability to download market data from the BSTX Market Data Blockchain, which it could use to, for example, back test trading strategies or evaluate executions received on BSTX.

Finally, in order to promote clarity with respect to how a BSTX Participant may use the BSTX Market Data Blockchain, the Exchange proposes to provide in Rule 17020(c)(3) that the information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant. The Exchange notes that broker-dealers recordkeeping obligations generally require a much broader set of records covering the entirety of a broker-dealers trading activity across all trading centers.³⁵ As a result, the Exchange would not expect that a BSTX Participant would ever rely on the BSTX Market Data Blockchain, which would contain only its trading activity on BSTX, as a substitute for its independent recordkeeping obligations.

Periodic Audit of the BSTX Market Data Blockchain by the Exchange

To help ensure the proper functioning of the BSTX Market Data Blockchain and accuracy of information thereon, the Exchange proposes in Rule 17020(c)(3) to periodically audit the BSTX Market Data Blockchain. Specifically, the Exchange proposes to perform the audit at least bi-annually to ensure that that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX. The Exchange expects that it will initially audit the BSTX Market Data Blockchain more frequently (e.g., monthly) during the first year of operation to make sure the BSTX Market Data Blockchain operates as intended during the period of time when the Exchange expects

³⁵ See e.g., 17 CFR 240.17a-3.

BSTX Participants to be familiarizing themselves with the BSTX Market Data Blockchain.

Benefits of the BSTX Market Data Blockchain

The Exchange believes that there are two primary benefits related to the BSTX Market Data Blockchain. First, the Exchange believes that a BSTX Participant may find the information useful to them for a variety of purposes such as to review the BSTX Participant's trading activity on BSTX, determine what the market was at a particular point in time on BSTX for a given Security, evaluate execution quality on BSTX, or download the data to back-test trading strategies. As proposed, the BSTX Market Data Blockchain requires no affirmative obligation on the part of the BSTX Participant. As a result, if a BSTX Participant does not find the BSTX Market Data Blockchain to be of use to it, it could simply ignore it without cost or penalty.

Second, the Exchange believes that the BSTX Market Data Blockchain will help familiarize BSTX Participants with the use and capabilities of blockchain technology in a manner that does not impose any burden on them or other market participants. The Commission has stated that it is "mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . ."³⁶ stating further that "[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets."³⁷ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission

³⁶ Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), <https://www.sec.gov/news/studies/techrp97.htm>.

³⁷ Id.

has explained its view that “[t]he market will ultimately prove the worth of technology – whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.”³⁸ Consistent with these statements, the Exchange believes that promoting use of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and that the proposal will thereby advance and protect the public’s interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.³⁹ Moreover, the Exchange believes that new technology, such as

³⁸ Id.

³⁹ Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94-75, at 8 (1975) (expressing Congress’ finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated “[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (e.g., internal audit, public auditors) with the opportunity to leverage the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.” Financial Industry Regulatory Authority, Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (January 2017), available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf. Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including “greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency” See Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency

blockchain technology, may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.⁴⁰

In the event of any disruption to the BSTX Market Data Blockchain or a BSTX Participant's access to the BSTX Market Data Blockchain, there would be no impact on the ability of market participants to trade Securities, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.⁴¹ There would also no be disruption in the distribution of market data related to Securities because the BSTX Market Data Blockchain operates as a separate and distinct service of the Exchange.

Trading Securities on Other National Securities Exchanges

Securities would be eligible for trading on other national securities exchanges that extend UTP to them, other than with respect to Thinly Traded Securities as discussed below in Part II.H. As described above in Part II.E, Securities would be held in "street name" at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (i.e., NSCC and DTC respectively). As a result, Securities would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would generally be able to extend

Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>. The Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology.

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ Id.

UTP to Securities in accordance with Commission rules. The BSTX Market Data Blockchain would not impact the ability of Securities to trade on other exchanges or OTC.

Qualifying Thinly Traded Securities Trading Only on BSTX

The Exchange proposes to suspend UTP in Securities that meet the proposed definition of a “Thinly Traded Security” in order to concentrate displayed liquidity for such Securities, make market making in such securities more attractive, and thereby improve the market quality for such Securities. As proposed, Thinly Traded Securities would still be able to trade OTC, but would not be eligible for trading on another national securities exchange for as long as the Security meets the definition of a Thinly Traded Security, described below.

The Commission, Commission staff, the U.S. Department of Treasury,⁴² academics, and a broad spectrum of market participants have recognized that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities”⁴³ and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.”⁴⁴ The Commission noted that the “secondary market for thinly traded securities

⁴² See U.S. Department of the Treasury, “A Financial System That Creates Economic Opportunities: Capital Markets” (October 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-MarketsFINAL-FINAL.pdf> (“Treasury Report”).

⁴³ Commission Statement on Market Structure Innovation for Thinly Traded Securities (Oct. 17, 2019), 84 FR 56956 (Oct. 24, 2019) (“Commission Statement on Thinly Traded Securities”).

⁴⁴ See Division of Trading and Markets, Commission, “Background Paper on the Market Structure for Thinly Traded Securities,” at 9 (Oct. 17, 2019), <https://www.sec.gov/rules/policy/2019/thinly-traded-securities-tm-background-paper.pdf> (“TM Background Paper”) (summarizing the views of certain

faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.”⁴⁵ These concerns have been echoed in statements by former Commission Chairman Jay Clayton,⁴⁶ former Director of the Division of Trading and Markets Brett Redfearn,⁴⁷ the Commission’s Small Business Advisory Committee⁴⁸ and demonstrated

participants in the Commission staff’s Roundtable on the Market Structure for Thinly Traded Securities in April 2018).

⁴⁵ Commission Statement on Thinly Traded Securities at 56956.

⁴⁶ “Illiquidity hampers [thinly-traded issuers] in many areas, including in their ability to raise additional capital, obtain research coverage, engage in mergers and acquisitions, and hire and retain personnel.” Chairman Jay Clayton, Commission, Equity Market Structure 2019: Looking Back & Moving Forward, Remarks at Gabelli School of Business, Fordham University, New York, New York (March 8, 2019) (“2019 Market Structure Remarks”), <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>.

⁴⁷ “I believe there are serious questions, however, about whether the current market structure that works relatively well for very active stocks is optimal for thinly traded securities.” Brett Redfearn, Director of the Division of Trading and Markets, Commission, Modernizing U.S. Equity Market Structure (June 22, 2020) (“2020 Market Structure Remarks”), <https://www.sec.gov/news/speech/clayton-redfearn-modernizing-us-equity-market-structure-2020-06-22>.

⁴⁸ Advisory Committee on Small and Emerging Companies, Commission, Recommendation Regarding Separate U.S. Equity Market for Securities of Small and Emerging Companies (February 1, 2013) (generally finding that the U.S. equity markets frequently fail to offer a satisfactory trading venue for small and emerging companies, which (i) has discouraged initial public offerings of the securities of such companies, (ii) undermines entrepreneurship, and (iii) weakens the broader U.S. economy), <https://www.sec.gov/info/smallbus/acsec/acsecrecommendation-032113-emerg-co-ltr.pdf>.

through empirical analyses by the Division of Trading and Markets' Office of Analytics and Research ("OAR")⁴⁹ and academics.⁵⁰

A frequently discussed potential solution to these liquidity and poor market quality issues facing thinly traded securities has been the suspension of UTP for such securities, allowing for displayed liquidity to be concentrated on a single exchange.⁵¹

Indeed, as former Chairman Jay Clayton noted, the Commission's Statement on Market Structure Innovation for Thinly Traded Securities specifically invites "market

⁴⁹ Division of Trading and Markets, Commission, "Empirical Analysis of Liquidity Demographics and Market Quality," (April 10, 2018) ("OAR Report"), https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf (finding, among other things, that thinly traded securities (i) had, on average, fewer exchanges quoting at the national best bid or national best offer than more actively traded securities; (ii) had quoted depths at the inside (*i.e.*, the volume of shares available at the highest bid and lowest offer) were smaller and quoted spreads (*i.e.*, the difference between bid and offer prices) and relative quoted spreads were greater for these thinly traded securities relative to more actively traded securities; and (iii) likely face a trading environment with less market making activity at the inside (*i.e.*, the highest bid and lowest offer) or in larger order size, which may make finding a counterparty to execute a particular trade more difficult). See also TM Background Paper at 2-3 (summarizing the findings from the OAR Report).

⁵⁰ See e.g., TM Background Paper at 6-7 (noting that "the economic literature in this area [of liquidity and trading volume] has consistently documented that stocks with lower trading volume tend to have higher transaction costs" and "[n]umerous studies have found evidence linking lower liquidity to lower stock prices, which suggests that diminished liquidity may also impact stock prices. These analyses show that investors must be paid a premium in order to hold less liquid stocks. Consequently, thinly traded securities may have lower stock prices due to diminished liquidity.") (internal citations omitted).

⁵¹ See e.g., Treasury Report at 60 ("Treasury recommends that issuers of less-liquid stocks, in consultation with their underwriter and listing exchange, be permitted to partially or fully suspend UTP for their securities and select the exchanges and venues upon which their securities will trade."); 2019 Market Structure Remarks, at n.13 (noting that several panelists on the Roundtable on Market Structure for Thinly-Traded Securities, supported the approach of limiting unlisted trading privileges, with some suggesting going even farther and considering whether Regulation NMS rules should be eliminated in this segment of the market).

participants to submit innovative proposals designed to improve the secondary market for thinly traded securities, including, in connection with such proposals, requests to suspend or terminate unlisted trading privileges, known as UTP.”⁵² In response to the Commission’s call and to improve the market quality for thinly traded securities, the Exchange proposes a suspension of UTP for qualifying “Thinly Traded Securities,” as detailed further below.

Thinly Traded Securities Defined

The Exchange proposes in Rule 25150(a) to define “Thinly Traded Securities” as a Security⁵³ of an operating company that meets certain market capitalization and average daily volume of trading (“ADV”) requirements. The Exchange proposes two separate, but similar, types of eligibility criteria depending on if a Security has been publicly traded for at least six months or if the Security is just beginning to trade publicly (*i.e.*, publicly traded for less than six months). Specifically, the Exchange proposes that a Security that has been publicly traded for at least six months shall be considered a Thinly Traded Security if the Security has (i) market capitalization of less than \$1 billion, and (ii) an average daily volume of trading of 100,000 shares or less during at least four (4) of the preceding six (6) calendar months (“Ongoing Eligibility Criteria”). For a Security that has not been publicly traded for at least six months, the Exchange proposes that a

⁵² 2020 Market Structure Remarks. See also Commission Statement on Thinly Traded Securities at 56957 (“[t]herefore, for thinly traded securities, the Commission is interested in considering proposals for market structure innovations in conjunction with the potential suspension or termination of UTP and/or the possibility of exemptive relief from Regulation NMS and other rules under the Exchange Act.”).

⁵³ The Exchange proposes to define a “Security” to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. See proposed Rule 17000(a)(31).

Security shall be considered a Thinly Traded Security if during the first three (3) months of public trading in the Security, the Security has a (i) market capitalization of less than \$1 billion, and (ii) an average daily volume of trading of 100,000 shares or less (“Initial Eligibility Criteria”).

Thinly Traded Security Criteria Thresholds

The Exchange believes that the criteria of a market capitalization of less than \$1 billion and an ADV of 100,000 shares or less are appropriate thresholds to determine whether a security is thinly traded. The ADV requirement is the primary indicator of whether a security is thinly traded as it helps indicate how much liquidity there is in a stock and the relative ease through which an investor may get into and out of positions in that stock. The Commission staff’s OAR Report found that NMS stocks with ADV of less than 100,000 “face a trading environment with less market making activity at the inside (i.e., the highest bid and lowest offer) or in larger order size, which may make finding a counterparty to execute a particular trade more difficult.” The OAR Report also found, among other things, that NMS stocks with an ADV of less than 100,000: (i) Have on average, fewer exchanges quoting at the national best bid or offer (“NBBO”); (ii) more volume executing away from exchange venues indicating that exchange venues are a relatively less attractive venue for executions in such securities; and (iii) have a smaller number of block trades than more actively traded securities.⁵⁴ The Treasury Report also recommended the use of ADV as a simple approach “to differentiate between liquid and illiquid stocks.”⁵⁵ Accordingly, the Exchange believes that a threshold of an ADV of

⁵⁴ See OAR Report and TM Background Paper at 2.

⁵⁵ Treasury Report at 60.

trading at or below 100,000 is appropriate because it would limit the Securities for which UTP is suspended only to those Securities that are in fact thinly traded and for which the Commission's OAR found concerns with respect to market quality relative to more widely-traded securities.⁵⁶

The Exchange believes that it is also appropriate to set a maximum market capitalization threshold for Thinly Traded Securities to ensure that the suspension of UTP (discussed below) is limited to small, thinly traded companies. The Exchange believes that companies with a market capitalization greater than \$1 billion may be more likely to have or soon have an ADV above 100,000 shares. The OAR Report indicates that the median market capitalization for common stocks with an ADV between 50,000 to 100,000 shares is \$313 million.⁵⁷ This same figure for common stocks with an ADV above 100,000 shares is \$1.313 billion.⁵⁸ Accordingly, the Exchange believes that most, if not all, stocks that have an ADV of 100,000 shares or less will also have a market capitalization of less than \$1 billion. The primary purpose of the market capitalization threshold is therefore to limit the availability of Thinly Traded Security status to smaller issuers and remove companies whose securities may soon reach an ADV of more than 100,000.

The Exchange proposes to set forth how it will calculate market capitalization in proposed Rule 25150(a)(4). For Ongoing Eligibility Criteria, market capitalization would

⁵⁶ The Exchange notes that OAR's criteria used an ADV of less than 100,000 shares while the Exchange proposes to use a criteria of 100,000 shares or less. The Exchange believes that this de minimis difference is immaterial.

⁵⁷ OAR Report at 4.

⁵⁸ Id.

be determined as the product of (a) the number outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the preceding six (6) full calendar months. For Initial Eligibility Criteria, market capitalization would be determined as the product of (a) the number of outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the first three months during which the Security has been publicly traded. The Exchange believes that this is a standard method for calculating the market capitalization of a security.

Average daily volume would be measured in accordance with the terms of the proposed Rules – e.g., for Ongoing Eligibility Criteria, the analysis would be the average daily share volume of trading in the Security over the preceding six months of trading to determine whether the ADV is 100,000 shares or less for four out of those six months. The Exchange believes the use of a look back of four out of the previous six months is a reasonable approach to determine whether a stock is thinly traded and is similar to other mechanisms used in Commission rules to evaluate differing regulatory treatment.⁵⁹ Under this formulation, a Security could have an ADV that exceeded 100,000 shares in up to two of the previous six months, but would be required to continuously meet the requirement of an ADV at or below 100,000 shares for four of the preceding six months on a rolling basis.

Thinly Traded Exchange Traded Products

⁵⁹ See e.g., 17 CFR 242.301(b)(5) (regarding the triggering of fair access requirements under Regulation ATS) and 17 CFR 242.1000 (defining a SCI ATS with reference to the volume of its trading).

Importantly, the Exchange proposes to limit the availability of Thinly Traded Security status to operating companies. This means that an ETP that is a Security would not be eligible to be considered a Thinly Traded Security even if it otherwise meets the criteria. The Exchange proposes to exclude ETPs from eligibility because ETPs, even those with an ADV of 100,000 shares or less, do not necessarily have the same problems of a lack of liquidity as thinly traded shares of an operating company. For example, participants in the Commission’s Roundtable on Market Structure for Thinly-Traded Securities (the “Roundtable”) noted that “as opposed to a corporate stock, an ETP that is thinly traded may still be highly liquid, and that therefore the level of secondary market trading does not correlate as closely with liquidity as it does for corporate stocks.”⁶⁰ Given that the purpose of the Exchange’s proposal with respect to Thinly Traded Securities is to improve liquidity and market quality for small issuers, the Exchange believes that it is appropriate to exclude ETPs that, while perhaps thinly traded, do not appear to suffer from the same liquidity issues as those faced by the securities of thinly traded operating companies.

Initial and Ongoing Criteria

As described above, the Exchange proposes different sets of criteria to become a Thinly Traded Security depending on how long a Security has been publicly traded. As proposed, the earliest in time that a Security could become eligible for status as a Thinly Traded Security (and therefore eligible for suspension of UTP, as discussed below) would be three months after the initial public offering of the Security. The Exchange

⁶⁰ Background Paper at 19. Other Roundtable participants similarly noted that “. . . as a practical matter, ETPs have ‘unlimited liquidity’ and an ETP can be both thinly traded and very liquid at the same time.” Id.

believes that every Security that undergoes an initial public offering should initially be available for UTP because there is no way to determine a priori whether or not a Security will be thinly traded. Only after there is some empirical evidence based on the first three months of public trading that a Security appears to be thinly traded would the Security become eligible.

The Exchange proposes in Rule 25150(a)(3) that a Security that becomes a Thinly Traded Security under the Initial Eligibility Criteria would be considered a Thinly Traded Security until it has been publicly traded for at least six months, at which time the Security would have to meet the Ongoing Eligibility Criteria. In effect, the Exchange proposes that a Security that meets the Initial Eligibility Criteria would be deemed to meet such criteria until it has been publicly traded for long enough to determine whether it meets the Ongoing Eligibility Criteria. The Exchange notes that any suspension of UTP, as discussed further below, would not be effective for at least thirty days after publication of a rule filing with the Commission in the *Federal Register*. As a result, a Security that meets the Initial Eligibility Criteria for the first three months that it trades publicly could only have UTP suspended at the earliest at the commencement of month four and more likely at the four and one half month mark.⁶¹ Thus, a Security that meets

⁶¹ After a seven business day review period during which the Commission may reject a rule filing submitted by the Exchange under certain circumstances (15 U.S.C. 78s(b)(10)), the Commission must publish a proposed rule change by the Exchange within 15 days after the initial submission by the Exchange to the Commission (15 U.S.C. 78s(b)(2)(E)). As a result, a rule filing seeking suspension of UTP for a qualifying Thinly Traded Security would likely only be published in the *Federal Register* at the earliest after the Security had been trading for 3.5 months and the suspension of UTP would only commence thirty days thereafter (i.e., after the Security had traded for 4.5 months). Suspension of UTP would then last for a minimum of 1.5 months, at which time, the Security would need to meet the Ongoing Eligibility requirements to continue to have UTP

the Initial Eligibility Requirements and for which UTP was suspended would be deemed to be a Thinly Traded Security for 1.5 to two months before it would have to meet the Ongoing Eligibility Criteria.

The Exchange believes that this approach of initially allowing a Security to be eligible for UTP promotes consistency with Section 6(b)(5) of the Exchange Act⁶² by helping to perfect the mechanism of a free and open market and by promoting just and equitable principles of trade. Specifically, the Exchange believes that companies engaged in an initial public offering should not have UTP suspended until it can be determined whether those shares have an ADV of 100,000 shares or less and market capitalization of less than \$1 billion, thereby ensuring that IPOs resulting in a high ADV or market capitalization are freely and openly available on all venues and equitably available on other exchange venues. The Exchange believes that three months is a sufficient amount of time to determine whether a Security that recently underwent its IPO is thinly traded given that interest in a Security is likely to be highest around the time of its IPO in connection with underwriter's selling efforts and the media attention that often accompanies an IPO. Thus, if a Security has an ADV of 100,000 shares or less during its first three months of trading despite this time period being among the most likely to have the highest market interest in the Security, the Security is likely to benefit from a suspension of UTP. The Exchange therefore proposes the Initial Eligibility Criteria as an early on-ramp to the suspension of UTP for a Security that has not yet traded for a full

continue to be suspended.

⁶² 15 U.S.C. 78f(b)(5).

four to six months to be able to determine whether it meets the Ongoing Eligibility Criteria.

Suspension of Unlisted Trading Privileges

As noted above, the Exchange proposes that a Security that qualifies as a Thinly Traded Security would be eligible for a suspension of UTP. The Exchange proposes that an issuer of a qualifying Thinly Traded Security would have to affirmatively request in writing that UTP be suspended. The Exchange believes that issuers should be empowered to make the decision as to whether UTP should be suspended with respect to the issuer's Thinly Traded Security.

Thereafter, in order to effectuate a suspension of UTP and to provide notice to market participants of the suspension of UTP, the Exchange would submit an immediately effective rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act,⁶³ with the effectiveness of such suspension of UTP occurring at least 30 calendar days after publication of the rule filing in the *Federal Register*.⁶⁴ Conversely, when a Security no longer meets the definition of a Thinly Traded Security under the Exchange's Rules, the Exchange would similarly submit a rule filing pursuant to Section 19b(b)(3)(A) within 14 calendar days of the Thinly Traded Security no longer qualifying as a Thinly Traded Security (and therefore no longer eligible to have UTP suspended).⁶⁵ The resumption of UTP with respect to the former Thinly Traded Security would be effective upon publication of the rule filing in the *Federal Register*.

⁶³ 15 U.S.C. 78s(b)(3)(A).

⁶⁴ See proposed Rule 25150(b)(1).

⁶⁵ See proposed Rule 25150(b)(2).

The Exchange believes that these rule filings to effectuate the suspension of UTP would be appropriately filed pursuant to Section 19(b)(3)(A) and Rule 19b-4(f) thereunder as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.⁶⁶ Specifically, the proposed rule change would provide notice of the Exchange's upcoming enforcement of proposed Rule 25150 to suspend UTP (or remove a suspension of UTP) with respect to a qualifying Thinly Traded Security.

The Exchange believes that exchanges are readily capable of suspending trading in a security that is currently traded on their exchange. Exchanges need and provide for the ability to suspend trading in securities on their exchange for regulatory halts, triggering of market wide or single stock circuit breakers, and to comply with the Commission's authority to order a trading halt pursuant to Section 12(k) of the Exchange Act.⁶⁷ Accordingly, the Exchange believes that voluntarily delaying the implementation of the suspension of UTP by 30 calendar days will provide other exchanges and market participants with adequate notice and sufficient time to prepare for a suspension of UTP in the relevant Thinly Traded Security. The Exchange also believes that exchanges are also readily capable of extending UTP to a Security that is not currently traded on the exchange.⁶⁸ Accordingly, the Exchange believes that other exchanges would be able to extend UTP to a Security for which the suspension of UTP is lifted shortly after the

⁶⁶ 15 U.S.C. 78s(b)(3)(A). 17 CFR 240.19b-4(f)(1).

⁶⁷ 15 U.S.C. 78l(k).

⁶⁸ For example, in November 2000, the Commission adopted amendment to Rule 12f-2 lifting a limitation that previously prevented an exchange from extending UTP until the day after trading commenced on the primary listing exchange. See Exchange Act Release No. 43217, 65 FR 53560 (Sept. 5, 2000).

effectiveness of the rule filing providing notice of a resumption in UTP with respect to the Security.

The Exchange recognizes that suspending UTP and making BSTX the only national securities exchange on which a Thinly Traded Security trades would increase both the relative importance of BSTX as a trading venue for such Thinly Traded Security and the disruption that might arise if access to BSTX were somehow disrupted. Accordingly, the Exchange proposes to run a live, parallel system in addition to the Exchange's primary system supporting trading in any Thinly Traded Securities for which UTP has been suspended in order to guard against a potential disruption in trading access. The Exchange would maintain the ability to automatically fail over to the other live or "hot" parallel system in the event of any disruption to the primary system.

In addition, because Thinly Traded Securities would no longer trade on other exchanges via UTP at the election of an issuer and a determination by the Exchange that the Security qualifies as a Thinly Traded Security, the Exchange plans to remove quotation and trading activity in Thinly Traded Securities from the revenue allocation formulas of the appropriate NMS plan for consolidated market data through an amendment to such plan(s).⁶⁹ The Exchange believes that it would be appropriate to exclude such Thinly Traded Securities from the revenue allocation formula so that the Exchange does not receive undue compensation from the NMS plan for consolidated market data arising from the Thinly Traded Securities. The existing and proposed

⁶⁹ The Exchange notes that certain exchanges have challenged the Commission's May 6, 2020, order directing the self-regulatory organizations to develop a new NMS plan for consolidated market data. Exchange Act Release No. 88827 (May 5, 2020), 85 FR 28702 (May 13, 2020). The Exchange would seek to amend the new NMS plan or the existing NMS plans as appropriate.

revenue allocation formulas apportion revenues from the NMS plan in part based on the amount of trading and quoting occurring on each exchange in “Eligible Securities” as defined under the NMS plan.⁷⁰ As a result, BSTX might receive additional profits under the revenue allocation formula if Thinly Traded Securities were not excluded from “Eligible Securities” given that BSTX would be the only venue able to quote and trade Thinly Traded Securities.

Finally, the Exchange proposes to make available each month anonymized trade and quotation data relating to Thinly Traded Securities to regulators, academics, and others requesting such market data from the Exchange for the purpose of studying the effects of the suspension of UTP. The Exchange intends to additionally perform its own analysis on the impact of the suspension of UTP for Thinly Traded Securities to evaluate its efficacy. The Exchange will evaluate market quality for Thinly Traded Securities across a variety of metrics including an analysis of: (i) Relative trading volumes on BSTX versus OTC; (ii) improvements in ADV; (iii) changes in quotation size (iv) changes in the depth of liquidity; (v) changes in spreads (quoted spread and realized spread); and (vi) changes in trade size. The Exchange will perform this analysis at least annually (provided there is sufficient sample data from the preceding year) and make public its findings with respect to how the market for Thinly Traded Securities has changed as a result of the suspension of UTP.

⁷⁰ See e.g., Exchange Act Release No. 90096 (Oct. 6, 2020), 85 FR 64565, Exhibit D (Oct. 13, 2020) <https://www.sec.gov/rules/sro/nms/2020/34-90096.pdf>.

Request for Exemptive Relief

The Exchange believes that it is in the public interest and consistent with protection of investors, pursuant to Section 6(b)(5) of the Exchange Act,⁷¹ as well as in furtherance of the perfection of a free and open market and national market system to suspend UTP under this proposal with respect to Thinly Traded Securities to improve liquidity and overall market quality for such Securities. Consistent with the Department of the Treasury's recommendations, the Exchange believes that "[c]onsolidating trading to fewer venues would simplify the process of making markets in those stocks and thereby encourage more market makers to provide more liquidity in those issues."⁷² Also consistent with the Department of the Treasury's recommendations, the Exchange proposes that there be no limitation on trading OTC in order "maintain a basic level of competition for execution" and that an issuer would be provided a choice as to whether its qualifying Thinly Traded Security have UTP suspended.⁷³

In addition, the Exchange believes that, consistent with the OAR Report which found that NMS stocks with an ADV of less than 100,000 shares experience more trading on off-exchange venues than on-exchange and have less quoted depth at the inside of the market, much of the poor market quality is attributable to deficiencies in displayed quotations of Thinly Traded Securities. As a result the Exchange believes that it is appropriate to suspend trading on other exchanges—i.e., other venues displaying

⁷¹ 15 U.S.C. 78f(b)(5).

⁷² Treasury Report at 60.

⁷³ Id.

liquidity—in order to concentrate displayed liquidity on a single exchange, while still allowing trading to occur in the OTC market.

The Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act⁷⁴ because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or \$1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

Similarly, consistent with Section 6(b)(5) of the Exchange Act,⁷⁵ the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s

⁷⁴ 15 U.S.C. 78f(b)(8).

⁷⁵ 15 U.S.C. 78f(b)(5).

statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.⁷⁶

Accordingly, the Exchange plans to submit an application for the suspension of UTP for Thinly Traded Securities, as described above, to the Commission pursuant to Rule 12f-3 of the Exchange Act, which rule allows issuers, broker-dealers who make markets in a security admitted to UTP, “or any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges” to submit an application for the suspension of UTP consistent with certain specified requirements.⁷⁷ The Exchange believes that there is good cause for the suspension of UTP to promote

⁷⁶ Commission Statement on Thinly Traded Securities at 56956.

⁷⁷ 17 CFR 240.12f-3.

efficiency, competition, and capital formation⁷⁸ by facilitating the trading of Thinly Traded Securities in a manner that addresses structural market quality challenges in today's markets for such securities.

Ability for BSTX Participants to Include a Parameter for a Preference for Settlement of Transactions in Securities Faster Than T+2

As described above in Section II.E.5., BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves a broker-dealer.⁷⁹ Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.⁸⁰ Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail below, however, orders in a Security that include a parameter indicating a preference for settlement on a T+0 basis ("Order with a T+0 Preference") or on a T+1 basis ("Order

⁷⁸ 15 U.S.C. 78c(f).

⁷⁹ See supra note 28.

⁸⁰ See proposed Rule 25060(h).

with a T+1 Preference”) would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.⁸¹ Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis, as described in more detail below. This means that at the time of order entry all orders in Securities would be regular way orders that would be presumed to settle on a T+2 basis. Faster settlement consistent with the rules, policies and procedures of a registered clearing agency would occur if and only if two orders execute against each other in a manner that meets the conditions in Rule 25060(h).

As proposed, an Order with a T+0 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) The Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case settlement shall occur on the trade date, or (ii) the Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case settlement shall occur the next trading day after the trade date (i.e., T+1). Similarly, as proposed, an Order with a T+1 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) the Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case settlement occurs on the

⁸¹ See proposed Rule 25100(d).

next trading day after the trade date (i.e., T+1). In all cases, an order not marked with a preference for either T+0 or T+1 settlement would be assured under the settlement timing logic in proposed Rule 25060(h) of settlement on T+2. The possibility of a shortened settlement time would have no impact on the Exchange's proposed price time priority structure for order matching.⁸²

As a result of this structure, all orders in Securities would be eligible to match and execute against any order against which they are marketable with settlement to occur at the later settlement date of any two matching orders. Only where an Order with a T+1 Preference or an Order with a T+0 Preference match with another Order with a T+1 Preference or Order with a T+0 Preference will those orders (or matching portions thereof) be eligible to settle more quickly than the standard settlement cycle of T+2. As previously noted in Part II.E, the Exchange believes that the clearance and settlement processes at NSCC and DTC are already capable of facilitating such shortened settlement times.

The Exchange believes that facilitating shorter settlement cycles as permitted under the rules, policies, and procedures of a registered clearing agency is consistent with Section 6(b)(5) of the Exchange Act⁸³ because it is in the public interest and furthers the protection of investors as well as helps perfect the mechanism of a free and open market and the national market system. Specifically, the Exchange believes that BSTX

⁸² For example, assume Order A is marked as an Order with a T+0 Preference and it is sent to BSTX and is marketable against both resting Order B (standard T+2 settlement, with time priority over Order C) and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B). Order A will interact first with Order B, notwithstanding that Order C is also marketable against Order A and is also marked as an Order with a T+0 Preference.

⁸³ 15 U.S.C. 78(f)(b)(5).

Participants have an interest in being able to access risk-reducing market functionality that is presently available and compatible with market structure, such as shorter settlement cycles, and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk. For example, market participants settling trades in a Security on a T+2 basis must post margin collateral to NSCC for two trading days. The margin collateral cannot otherwise be used until settlement on T+2. In addition, by shortening the timing of settlement from T+2 to T+1 or T+0, the risk horizon for a potential default in settling the trade is correspondingly shortened as well. This means that market participants engaged in a transaction settling transactions on shorter settlement cycles than T+2 receive the benefits of not having to encumber collateral assets for as long and facing a shorter period of settlement risk. The Exchange believes that these benefits in turn free up assets to be used elsewhere in financial markets, thereby helping to promote the efficient allocation of capital and perfecting the mechanism of a free and open market.⁸⁴ All else being equal, the Exchange believes that a BSTX participant may find that between two otherwise identical stocks, one for which it may be able to settle the transaction more quickly is more attractive than one that settles over a longer duration and potentially requires collateral to be held for a longer period.

The Exchange notes that the proposed potential for shortened settlement timing for an Order with a T+0 Preference or an Order with a T+1 Preference will in no way impact or prevent any market participant that desires to effect a trade in a Security on BSTX from doing so. This is because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other

⁸⁴ Id.

order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders. Accordingly, non-BSTX Participants seeing a quote in a Security on BSTX will remain able to execute against that quote posted on BSTX even if that quote includes a latent parameter for a preference for T+0 or T+1 settlement where consistent with the rules, policies and procedures of a registered clearing agency. In this way, the Exchange believes that the proposal is fully compatible with the current market structure and would help perfect the mechanism of a free and open market by allowing for shorter settlement times than T+2 where consistent with the rules, policies and procedures of a registered clearing agency and where both parties to a transaction in a Security indicate a preference for faster settlement than T+2.

Finally, because all orders in Securities submitted to BSTX would at the time of the order entry be presumed to settle on a regular way T+2 basis and would interact with any other order against which the order is marketable, the Exchange believes that Orders with a T+0 Preference and Orders with a T+1 Preference would be considered “protected” within the meaning of Rule 611 of the Exchange Act.⁸⁵ Orders with a T+0 Preference and Orders with a T+1 Preference would not fall within the exception for protected quotation status set forth in Rule 611(b)(2) of the Exchange Act because they will only settle more quickly than T+2 where all of the conditions in Rule 25060(h) are

⁸⁵ 17 CFR 242.611.

met, as described above, where settlement faster than T+2 is consistent with the rules, policies and procedures of a registered clearing agency.⁸⁶

In adopting amendments to SEC Rule 15c6-1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty⁸⁷ (“CCP”) services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”⁸⁸ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may

⁸⁶ 17 CFR 242.611(b)(2).

⁸⁷ See 17 CFR 240.17Ad-22(a)(2) (defining the term “central counterparty” to mean “a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer”).

⁸⁸ Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570-71 (March 29, 2017).

pass down to other market participants[.]”⁸⁹ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”⁹⁰ BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rules 25060(h) and 25100(d) in a form that would promote the benefits of available, shorter settlement cycles.⁹¹

Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 29000.

General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of Securities and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term “customer.”⁹² The Exchange proposes to set forth new definitions for certain

⁸⁹ Id. at 15571.

⁹⁰ Id. at 15582.

⁹¹ As described in this Part II.I, an order for a Security marked for T+0 or T+1 could still interact with any other order, including an order with the default T+2 settlement, with settlement to occur at the later of any two matched orders (e.g., if a T+1 order matches with a T+2 order, the orders would settle T+2). Only where an order marked for a shorter settlement time matches with another order similarly marked would a shorter settlement time occur. Consequently, the proposed use of shorter settlement times would not adversely impact any market participant seeking T+2 settlement in a transaction for a Security.

⁹² Proposed Rule 17000(a)(17) defines the term “customer” to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. See

terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.⁹³ The Exchange also proposes to define certain unique terms relating to the trading of Securities, including the term “Security” itself⁹⁴ and “Thinly Traded Securities,”⁹⁵ as well as for other features of BSTX such as the “BSTX Market Data Blockchain.”⁹⁶

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 29000 Series apply to the trading, listing, and related matters pertaining to the trading of Securities. Proposed Rule 17010(b)

e.g., IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term “Regular Trading Hours” as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See proposed Rule 17000(a)(29) cf. IEX Rule 1.160(gg) (defining “Regular Market Hours” in the same manner).

⁹³ For example, the Exchange proposes to define the term “BSTX” to mean the facility of the Exchange for executing transaction in Securities, the term “BSTX Participant” to mean a Participant or Options Participant (as those terms are defined in the Exchange’s Rule 100 Series) that is authorized to trade Securities, and the term “BSTX System” to mean the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(8), (11), and (15).

⁹⁴ Proposed Rule 17000(a)(31) provides that the term “Security” means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a “security” or “securities” in the Rules may include Securities.

⁹⁵ Proposed Rule 17000(a)(32) provides that the term “Thinly Traded Security” is defined in Rule 25150. See Part II.H for further discussion of Thinly Traded Securities and the definition set forth in proposed Rule 25150.

⁹⁶ Proposed Rule 17000(a)(9) provides that the term “BSTX Market Data Blockchain” means the private, permissioned blockchain network through which a BSTX Participant may access certain order and transaction data related to trading activity on BSTX. See Part II.F for further discussion of the BSTX Market Data Blockchain.

provides that, unless specific Rules relating to Securities govern or unless the context otherwise requires, the provisions of any Exchange Rule (i.e., including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.⁹⁷ This is intended to make clear that BSTX Participants are subject to all of the Exchange's Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading Securities. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act⁹⁸ because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes "BSTX Participants" as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement;⁹⁹ (ii) be an existing Options Participant or become a Participant of

⁹⁷ Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of Securities contained in Rule 17000 Series to Rule 29000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to Security trading shall control.

⁹⁸ 15 U.S.C. 78f(b)(5).

⁹⁹ The BSTX Participant Application, Participation Agreement, and User Agreement

the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.¹⁰⁰ Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3-1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear Security transactions through another BSTX Participant that is a member/participant of a registered clearing agency.¹⁰¹ Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act¹⁰² because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange

have been submitted as Exhibits 3A, 3B, and 3C to the proposal respectively.

¹⁰⁰ Proposed Rule 18000 also sets forth the Exchange's review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (e.g., in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM-2040-5, which specifies continuing education requirements of Exchange Participants and their associated persons.

¹⁰¹ Proposed Rule 18010(b) is similar to the rules of existing exchanges. See e.g., IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. See e.g., IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

¹⁰² 15 U.S.C. 78f(b)(5).

Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.¹⁰³

Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.¹⁰⁴ The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable

¹⁰³ The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. See Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

¹⁰⁴ See Cboe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

principles of trade;¹⁰⁵ (ii) adherence to law;¹⁰⁶ (iii) use of fraudulent devices;¹⁰⁷ (iv) false statements;¹⁰⁸ (v) know your customer;¹⁰⁹ (vi) fair dealing with customers;¹¹⁰ (vii) suitability;¹¹¹ (viii) the prompt receipt and delivery of securities;¹¹² (ix) charges for services performed;¹¹³ (x) use of information obtained in a fiduciary capacity;¹¹⁴ (xi) publication of transactions and

¹⁰⁵ Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

¹⁰⁶ Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

¹⁰⁷ Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

¹⁰⁸ Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

¹⁰⁹ Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

¹¹⁰ Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (e.g., churning or overtrading in relation to the objectives and financial situation of a customer).

¹¹¹ Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

¹¹² Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

¹¹³ Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

¹¹⁴ Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (e.g., as a trustee).

quotations;¹¹⁵ (xii) offers at stated prices;¹¹⁶ (xiii) payments involving publications that influence the market price of a security;¹¹⁷ (xiv) customer confirmations;¹¹⁸ (xv) disclosure of a control relationship with an issuer of Securities;¹¹⁹ (xvi) discretionary accounts;¹²⁰ (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts;¹²¹ (xviii) the extent to which sharing in accounts is permissible;¹²² (xix) communications with

¹¹⁵ Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

¹¹⁶ Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

¹¹⁷ Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

¹¹⁸ Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b-10 of the Exchange Act. 17 CFR 240.10b-10.

¹¹⁹ Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

¹²⁰ Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

¹²¹ Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

¹²² Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

customers and the public;¹²³ (xx) gratuities;¹²⁴ (xxi) telemarketing;¹²⁵ and (xxii) mandatory systems testing.¹²⁶ The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of Securities on the BSTX System.¹²⁷

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act¹²⁸ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would

¹²³ Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

¹²⁴ Proposed Rule 19190 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

¹²⁵ Proposed Rule 19200 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

¹²⁶ Proposed Rule 19210 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

¹²⁷ For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (e.g., higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. See e.g., IEX Rule 3.290, Cboe BZX Rule 3.21.

¹²⁸ 15 U.S.C. 78f(b)(5).

violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.¹²⁹

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.¹³⁰ The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records;¹³¹ (ii)

¹²⁹ See supra note 1044.

¹³⁰ See Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

¹³¹ Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

financial reports;¹³² (iii) net capital compliance;¹³³ (iv) early warning notifications pursuant to Rule 17a-11 under the Exchange Act;¹³⁴ (v) authority of the Chief Regulatory Officer to impose certain restrictions;¹³⁵ (vi) margin;¹³⁶ (vii) day-trading margin;¹³⁷ (viii) customer account information;¹³⁸ (ix) maintaining records of customer complaints;¹³⁹ and (x) disclosure of financial condition.¹⁴⁰

¹³² Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

¹³³ Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3-1 under the Exchange Act (17 CFR 240.15c3-1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

¹³⁴ 17 CFR 240.17a-11. Proposed Rule 20030 (“Early Warning” Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a-11 under the Exchange Act (17 CFR 240.17a-11) or similar “early warning” requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

¹³⁵ Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange’s Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

¹³⁶ Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer’s margin account.

¹³⁷ Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

¹³⁸ Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

¹³⁹ Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

¹⁴⁰ Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant’s financial condition upon request of a customer.

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁴¹ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (“SRO”) by reference.

Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially

¹⁴¹ 15 U.S.C. 78f(b)(5).

similar to supervisory rules of other exchanges.¹⁴² The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant's conduct and compliance with applicable regulatory requirements;¹⁴³ (ii) designation of an individual to carry out written supervisory procedures;¹⁴⁴ (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures;¹⁴⁵ (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses;¹⁴⁶ (v) the prevention of the misuse of material non-public information;¹⁴⁷ and (vi) implementation of an anti-money laundering ("AML") compliance program.¹⁴⁸ These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review

¹⁴² See Cboe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

¹⁴³ Proposed Rule 21000 (Written Procedures).

¹⁴⁴ Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

¹⁴⁵ Proposed Rule 21020 (Records).

¹⁴⁶ Proposed Rule 21030 (Review of Activities).

¹⁴⁷ Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

¹⁴⁸ Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁴⁹ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.¹⁵⁰ In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.¹⁵¹

Miscellaneous Provisions (Rule 22000 Series)

¹⁴⁹ 15 U.S.C. 78f(b)(5).

¹⁵⁰ Id.

¹⁵¹ See supra note 142.

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are substantially similar to rules of other exchanges.¹⁵² These miscellaneous provisions relate to: (i) Comparison and settlement requirements;¹⁵³ (ii) failures to deliver and failures to receive;¹⁵⁴ (iii) forwarding of proxy and other issuer-related materials;¹⁵⁵ (iv) commissions;¹⁵⁶ (v) regulatory services agreements;¹⁵⁷ and (vi) transactions involving Exchange employees.¹⁵⁸ These rules are designed to capture

¹⁵² See Cboe BZX Chapter 13 rules. See also IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

¹⁵³ Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

¹⁵⁴ Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200 – 203 of Regulation SHO by reference into the rule (17 CFR 242.200 through .203).

¹⁵⁵ Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

¹⁵⁶ Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

¹⁵⁷ Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

¹⁵⁸ Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (e.g., promptly obtaining and implementing

additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200 – 203 of Regulation SHO.¹⁵⁹

The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁶⁰ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO¹⁶¹ as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.¹⁶² Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

Trading Practice Rules (Rule 23000 Series)

an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

¹⁵⁹ 17 CFR 242.200 through .203.

¹⁶⁰ 15 U.S.C. 78f(b)(5).

¹⁶¹ 17 CFR 242.203.

¹⁶² 15 U.S.C. 78f(e)(1).

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.¹⁶³ The proposed Rule 23000 Series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.¹⁶⁴ Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a

¹⁶³ See Cboe BZX Chapter 12 rules.

¹⁶⁴ Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.¹⁶⁵ Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.¹⁶⁶

¹⁶⁵ Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

¹⁶⁶ In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other exchanges,¹⁶⁷ and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.¹⁶⁸ Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of \$0.01 to the unexecuted held limit order. While FINRA Rule

¹⁶⁷ See e.g., Cboe BZX Rule 12.6.

¹⁶⁸ See e.g., Cboe BZX Rule 12.6.07.

5320.06 sets forth alternate, lower price improvement standards for securities priced below \$1, the Exchange proposes to adopt a uniform price improvement requirement of \$0.01 for Securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of \$0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges¹⁶⁹ except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (i.e., 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for Securities pursuant to proposed Rule 25020 is one Security. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 Securities (i.e., trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act¹⁷⁰ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed

¹⁶⁹ See e.g., Cboe BZX Rule 12.5.05.

¹⁷⁰ 15 U.S.C. 78f(b)(5).

rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of Securities. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in Securities and are not necessary for the Exchange to carry out its functions of facilitating Security transactions and regulating BSTX Participants.

Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.¹⁷¹

¹⁷¹ The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 24010 are discussed below in Part IV.

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

Trading Rules and the BSTX System (Rule 25000 Series)

Rule 25000 – Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act¹⁷² because it is designed to protect investors and the public interest and promote just and equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

Rule 25010 – Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (e.g., New Year’s Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person’s designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any Securities, close some or all of BSTX’s facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,¹⁷³ by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when

¹⁷² 15 U.S.C. 78f(b)(5).

¹⁷³ 15 U.S.C. 78f(b)(5).

such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

Rule 25020 – Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one Security. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act¹⁷⁴ because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of Securities on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.¹⁷⁵

Rule 25030 – Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for Securities shall be \$0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for Securities and promotes compliance with Rule 612 of Regulation NMS.¹⁷⁶ Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than \$0.01 if that bid or offer or order is priced equal to or greater than \$1.00 per share. Where a bid or offer or order is priced less than or equal to \$1.00

¹⁷⁴ 15 U.S.C. 78f(b)(5).

¹⁷⁵ See e.g., IEX Rule 11.180.

¹⁷⁶ 17 CFR 242.611.

per share, the minimum acceptable increment is \$0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all Securities of \$0.01 irrespective of whether the Security is trading below \$1.00.

Rule 25040 – Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed Securities and non-BSTX-listed securities. For BSTX-listed Securities, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.¹⁷⁷ Similar to how the Exchange’s opening process works for options trading, BSTX would disseminate a theoretical opening price (“TOP”) to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.¹⁷⁸ Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) “Paired Securities,” which is the quantity of Securities that would execute at the TOP; (ii) the “Imbalance Quantity,” which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the “Imbalance Side,” which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, “Broadcast Information”).¹⁷⁹ Broadcast Information would be recalculated and disseminated every

¹⁷⁷ As a result, orders marked IOC submitted during the Pre-Opening Phase would be rejected by the BSTX System. See proposed Rule 25040(a)(7).

¹⁷⁸ The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. See proposed Rule 25040(a)(2).

¹⁷⁹ Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (i.e.,

time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change. With respect to priority during the opening match for all Securities, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.¹⁸⁰ Proposed Rule 25040(a)(6) provides that the opening match price is the price which results in the matching of the highest number of Securities. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting Securities in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest Securities in the BSTX Book, the price closest to the previous day's closing price will be selected.¹⁸¹ The opening price must also be within the "Collar Price Range" as set forth in proposed Rule 25040(a)(5), which is designed to ensure that a Security opens in an fair and orderly manner and under market conditions where there is sufficient quotation interest (e.g., a national best bid and offer), the market

bid higher or offer lower) than the TOP would be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

¹⁸⁰ See proposed Rule 25040(a)(4)(ii).

¹⁸¹ With respect to an initial public offering of a Security where there is no previous day's closing price, the opening price would be the price assigned to the Security by the underwriter for the offering, referred to as the "Initial Security Offering Reference Price." See Proposed Rule 25040(a)(5)(ii)(3).

is not crossed, and where the opening price will not drastically depart from the market at the time of the auction or the preceding day's closing price.¹⁸² Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.¹⁸³ When the BSTX System cannot determine an opening price of a BSTX-listed Security at the start of regular trading hours, BSTX would nevertheless open the Security for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.¹⁸⁴

For initial public offerings of Securities ("Initial Security Offerings"), the process would be generally the same as regular market openings. However, in advance of an Initial Security Offering auction ("Initial Security Offering Auction"), the Exchange shall announce a "Quote-Only Period" that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the Initial Security Offering Auction.¹⁸⁵ The Quote-Only Period may be extended in certain cases.¹⁸⁶ As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated

¹⁸² See proposed Rule 25040(a)(5). The Exchange notes that the auction collars proposed in Rule 25040(a)(5) are substantially similar to those of Cboe BZX. See Cboe BZX Rule 11.23.

¹⁸³ See proposed Rule 25040(a)(7).

¹⁸⁴ Id.

¹⁸⁵ See proposed Rule 25040(b)(1).

¹⁸⁶ Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the Initial Security Offering or of the Exchange to complete the Initial Security Offering. See proposed Rule 25040(b)(2).

every time a new order is received or cancelled and where such event causes the TOP price or Paired Securities to change.¹⁸⁷ In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.¹⁸⁸ Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.¹⁸⁹ Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).¹⁹⁰

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (“Halt Auctions”). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.¹⁹¹ This Quote-Only

¹⁸⁷ See proposed Rule 25040(b)(3).

¹⁸⁸ See proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. Id.

¹⁸⁹ See proposed Rule 25040(b)(5).

¹⁹⁰ As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an Initial Security Offering Auction would be rejected. See proposed Rule 25040(b)(6).

¹⁹¹ See proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected. In addition, Halt Auctions would be subject to the proposed Halt Auction Collar, as set forth in proposed Rule 25040(c)(2)(i) and (ii). These proposed collars for Halt Auctions are substantially similar to those provided by Cboe BZX, and are designed to make sure that the Exchange is able to reopen trading in a Security in a fair and orderly manner. See Cboe BZX Rule 11.23(d). To the extent an Halt Auction would occur at an “Impermissible Price” (i.e., a price outside of the proposed Halt Auction collars), the Exchange would extend the period of Halt Auction and gradually expand the scope of the collar

Period may be extended in certain circumstances.¹⁹² The Exchange proposes to disseminate the same Broadcast Information as it does for an Initial Security Offering Auction and would similarly provide notification of any extension to the quote-only period as with an Initial Security Offering Auction.¹⁹³ The transition to normal trading would also occur in the same manner as Initial Security Offering Auctions, as described above.¹⁹⁴

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an Initial Security Offering Auction the Exchange will publicly announce the Quote-Only Period for the Initial Security Offering Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.¹⁹⁵ Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted Security on the BSTX Book will be

price range over time until it is able to re-open trading in the Security in a manner consistent with proposed Rule 25040(c)(2).

¹⁹² See proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (“Initial Extension Period”). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (“Additional Extension Period”) until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. Id.

¹⁹³ See proposed Rule 25040(c)(3)-(5).

¹⁹⁴ Id.

¹⁹⁵ See proposed Rule 25040(d)(1).

canceled after which the Exchange will open the Security for trading without an auction.¹⁹⁶

The opening process with respect to non-BSTX-listed securities is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (“Opening Process”). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.¹⁹⁷ Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security subject to a halt.¹⁹⁸ The

¹⁹⁶ See proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (see e.g., IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an Initial Security Offering Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

¹⁹⁷ See proposed Rule 25040(e)(2).

¹⁹⁸ See proposed Rule 25040(e)(5).

proposed opening process for Securities listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading Securities, or the equivalent thereof, given that there are no other exchanges currently trading Securities. The proposed process for opening Securities listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.¹⁹⁹

Consistent with Section 6(b)(5) of the Exchange Act,²⁰⁰ the Exchange believes that the proposed process for opening trading in BSTX-listed Securities and Securities listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of Securities.²⁰¹ Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in Securities listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed Security, the Exchange will proceed by opening regular hours trading in the

¹⁹⁹ See e.g., Cboe BZX Rule 11.24.

²⁰⁰ 15 U.S.C. 78f(b)(5).

²⁰¹ The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a Security on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a Security that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. Id. This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. Id.

Security anyway, which is consistent with the manner in which other exchanges open trading in securities.²⁰² With respect to initial public offerings of Securities and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a Security, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.²⁰³ Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

Rule 25050 – Trading Halts

BSTX proposes to adopt rules relating to trading halts²⁰⁴ that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading Securities. Below is an explanation of BSTX’s approach to certain categories of orders during a trading halt:

²⁰² See e.g., BOX Rule 7070.

²⁰³ The Exchange notes that its proposed opening, Initial Security Offering Auction, and Halt Auction processes are substantially similar to those of another exchange. See Cboe BZX Rule 11.23. The key differences between the Exchange’s proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex.

²⁰⁴ The Exchange notes that rules on opening trading for non-BSTX-listed security are set forth in proposed Rule 25040(e).

- Short Sales – BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.
- Pegged Orders – BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.
- Routable Orders – Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.
- Limit Orders – Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.²⁰⁵
- Auction Orders, Market Orders, and FOK Orders – BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.²⁰⁶

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security subject to a trading halt, reject any incoming orders in that

²⁰⁵ See e.g., Cboe BZX 11.18(e)(5)(B).

²⁰⁶ IOC orders would be handled pursuant to proposed Rule 25050(g)(5).

Security, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.²⁰⁷

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act²⁰⁸ to provide for a mechanism to halt trading in Securities during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act²⁰⁹ because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

Rule 25060 – Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit

²⁰⁷ Trading would resume pursuant to proposed Rule 25040(e)(5). See proposed Rule 25050(g)(7).

²⁰⁸ 15 U.S.C. 78f(b)(5).

²⁰⁹ Id.

orders.²¹⁰ Orders that do not designate a limit price would be rejected.²¹¹ The BSTX System would also only support two time-in-force (“TIF”) designations initially: (i) DAY; and (ii) immediate or cancel (“IOC”). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.²¹² All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100. The Exchange has also proposed an additional order parameter for BSTX Participants to indicate a preference for T+0 or T+1 settlement, as previously described in Item 3, Part II.I.

²¹⁰ The BSTX System will also accept incoming Intermarket Sweep Orders (“ISO”) pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. See e.g., Cboe BZX Rule 11.9(d).

²¹¹ Proposed Rule 25060(c)(1).

²¹² Proposed Rule 25060(d)(1).

Consistent with Section 6(b)(5) of the Exchange Act,²¹³ the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

Rule 25070 – Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (e.g., exercise price) because Securities are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required

²¹³ 15 U.S.C. 78f(b)(5).

information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,²¹⁴ because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.*, above) the best bid, unless the sell order is marked "short exempt" pursuant to Regulation SHO.

Rule 25080 – Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation

²¹⁴ 15 U.S.C. 78f(b)(5).

SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.²¹⁵

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act²¹⁶ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for Security transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market “short exempt,” is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

Rule 25090 – BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however may set default values for this control. The

²¹⁵ See e.g., Cboe BZX Rule 11.13(a)(2)-(3) governing regular trading hours.

²¹⁶ 15 U.S.C. 78f(b)(5).

proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act²¹⁷ because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

²¹⁷ 15 U.S.C. 78f(b)(5).

Rule 25100 – Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an “automated market center” within the meaning of Regulation NMS and will display “automated quotations” at all times except in the event of a system malfunction.²¹⁸ In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.²¹⁹ BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant

²¹⁸ 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an “automated trading center” displaying “automated quotations” relates to whether or not an exchange’s quotations may be considered protected under Regulation NMS. See Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to Securities.

²¹⁹ 17 CFR 242.602.

to the rules, policies, and procedures of a registered clearing agency. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.²²⁰

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act²²¹ because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in Securities, consistent with Section 6(b)(5) of the Exchange Act.²²²

Rule 25110 – Clearly Erroneous

²²⁰ These proposed provisions are substantially similar to those of exchanges. See e.g., Nasdaq Rule 4627 and IEX Rule 10.250.

²²¹ 15 U.S.C. 78f(b)(5).

²²² Id.

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (“Official”).²²³ BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.²²⁴ Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the “Reference Price”²²⁵ by an amount that equals or exceeds specified “Numerical Guidelines.”²²⁶ The Official may consider additional factors in determining

²²³ A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous would be removed from the Consolidated Tape. Proposed Rule 25110(a).

²²⁴ Proposed Rule 25110(b). The Official may also consider certain “outlier” transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

²²⁵ The Reference Price would be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

²²⁶ The proposed Numerical Guidelines are 10% where the Reference Price ranges from \$0.00 to \$25.00, 5% where the Reference Price is greater than \$25.00 up to and including \$50.00, and 3% where the Reference Price ranges is greater than \$50. Proposed Rule 25110(c)(1).

whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.²²⁷ Similar to other exchanges' clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.²²⁸ Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.²²⁹ The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,²³⁰ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply

²²⁷ Proposed Rule 25110(c)(1).

²²⁸ See proposed Rule 25110(f) – (j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (e.g., replacing the term "security" with "Security").

²²⁹ Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Proposed Rule 25110(d)(2).

²³⁰ 15 U.S.C. 78f(b)(5).

equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.²³¹ The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.²³² For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for Securities will not route to other exchanges.²³³ Securities would also only trade during regular trading hours (i.e., 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in unlisted trading privileges securities that are subject to an initial public offering.²³⁴

²³¹ Id.

²³² See e.g., Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, securities subject to the LULD Plan, and for leveraged ETP Securities.

²³³ Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the "Consolidated Tape" and provides that clearly erroneous Security transactions will be removed from "all relevant data feeds disseminating last sale information for Security transactions." See proposed Rule 25110(a).

²³⁴ The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. See IEX Rule 11.270.

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act²³⁵ because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.²³⁶ In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

²³⁵ 15 U.S.C. 78f(b)(5).

²³⁶ See BOX Rule 7170(n).

To the extent Securities become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act²³⁷ at such future date.

Rule 25120 – Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.²³⁸ Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a “covered security”²³⁹ at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security’s closing price on the listing market as of the end of Regular Trading Hours on the prior day (the “Trigger Price”). The proposed rule further specifies the duration of the “Short Sale Price Test” and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.²⁴⁰

²³⁷ 15 U.S.C. 78s.

²³⁸ See e.g., IEX Rule 11.290.

²³⁹ Proposed Rule 25120(b) provides that the terms “covered security,” “listing market,” and “national best bid” shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

²⁴⁰ Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1)

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,²⁴¹ because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,²⁴² and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.²⁴³ Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

Rule 25130 – Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.²⁴⁴ Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants from engaging in a pattern or practice

that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.

²⁴¹ 15 U.S.C. 78f(b)(5).

²⁴² 17 CFR 242.200(g).

²⁴³ 17 CFR 242.201(b)(1).

²⁴⁴ See IEX Rule 11.310.

of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act²⁴⁵ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

Rule 25140 – Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

²⁴⁵ 15 U.S.C. 78f(b)(5).

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act²⁴⁶ because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.²⁴⁷

Rule 25150 – Thinly Traded Securities and Suspension of Unlisted Trading Privileges

Proposed Rule 25150 would set forth the criteria for eligible Securities to be considered “Thinly Traded Securities” for which UTP may be suspended at the election of the issuer. Discussion of this Rule is set forth above in Part II.H.

Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200 – 25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (“DMMs”) in a given Security, allocation of a DMM to a particular Security, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange’s discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market

²⁴⁶ 15 U.S.C. 78f(b)(5).

²⁴⁷ See e.g. IEX Rule 11.250.

Maker in such cases). The proposed Rule further provides that a BSTX Market Maker's registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.²⁴⁸

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each Security in which it is registered as a Market Maker.²⁴⁹ The Exchange proposes that such quotes must be entered within a certain percentage, called the "Designated Percentage," of the National Best Bid (Offer) price in such Security (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.²⁵⁰ The Exchange proposes that the Designated Percentage would be 30%.²⁵¹ The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).²⁵² The Exchange believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer ("NBBO") in Securities and to ensure fair and orderly markets. The Exchange notes that pursuant to

²⁴⁸ Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

²⁴⁹ See proposed Rule 25210(a)(1).

²⁵⁰ See proposed Rule 25210(a)(1)(ii)(A).

²⁵¹ See proposed Rule 25210(a)(1)(ii)(B).

²⁵² See NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below \$1.00 is 30% and for Tier 2 NMS stocks priced above \$1.00 is 28%).

proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM's quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the "Defined Limit," in a Security for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that Security. The Exchange proposes that the Defined Limit shall be 31.5%.²⁵³ Under the proposed Rules, a Market Maker's quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.²⁵⁴ Under the proposed Market Maker and DMM Rules, Market Makers and DMMs' two-sided quotation obligations must be maintained for a quantity of a "normal unit of trading" which is defined as one Security.²⁵⁵ The Exchange believes that Securities may initially trade in smaller

²⁵³ See proposed Rule 25210(a)(1)(ii)(3).

²⁵⁴ See proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such as demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

²⁵⁵ See proposed Rule 25210(a)(1).

increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (i.e., 100 shares) to one Security will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be \$0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of Securities pursuant to proposed Rule 25230, which is described below.²⁵⁶ For Securities in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all Securities in which such Participant serves as DMM.²⁵⁷ The proposed Rule provides, among other things, that there will be no more than one DMM per Security and that a DMM must maintain information barriers between the trading unit operating as a DMM

²⁵⁶ See proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic]

²⁵⁷ See proposed Rule 25220(c).

and the trading unit operating as a BSTX Market Maker in the same Security (to the extent applicable).²⁵⁸ The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker²⁵⁹ and similar to the same process for DMMs on other exchanges.²⁶⁰ The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchange proposes to add a provision stating that the Exchange is not required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security. The purpose of this requirement is to acknowledge the possibility that a Security need not necessarily have a DMM provided that each Security has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular Security. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a Security may be allocated to a DMM, providing that this may occur when the Security is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the Security.²⁶¹ Proposed Rule 2530(a) also specifies that a

²⁵⁸ See proposed Rule 25220(b).

²⁵⁹ See proposed Rule 25210(d).

²⁶⁰ See e.g., NYSE American Rule 7.24E(b)(4).

²⁶¹ As previously noted, pursuant to proposed Rule 26106, a Security may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a Security might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM

DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.²⁶²

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a Security. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to select its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its Security consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a Security for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)-(3), with the exception that the Exchange may shorten the one year DMM commitment

later.

²⁶² See proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

period in compelling circumstances.²⁶³ Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity Security listing after preferred Security, listed company mergers, target Securities, and closed-end management investment companies.²⁶⁴ Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)-(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similar to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.²⁶⁵ Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)-(f).

²⁶³ The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

²⁶⁴ See proposed Rule 25230(b)(4)-(11).

²⁶⁵ In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act²⁶⁶ because they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,²⁶⁷ and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.²⁶⁸ The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in Securities. Although the

²⁶⁶ 15 U.S.C. 78f(b)(5).

²⁶⁷ See NYSE American Rule 7, Section 2.

²⁶⁸ In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all Security trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of Security investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁶⁹

The Exchange has also proposed that the minimum quotation size of Market Makers will be one Security. As noted above, the Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (i.e., 100 shares) to one Security would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

**BSTX Listing Rules Other than for Exchange Traded Products and
Suspension and Delisting Rules (Rule 26000 and 27000 Series)**

²⁶⁹ 15 U.S.C. 78f(b)(5).

The BSTX Listing Rules Other than for Exchange Traded Products (the “Non-ETP Listing Rules”) in the Rule Series 26000 and the Suspension and Delisting Rules in the Rule 27000 Series have been adapted from, and are substantially similar to, Parts 1 – 12 of the NYSE American LLC Company Guide.²⁷⁰ Except as described below, each proposed Rule in the BSTX 26000 and 27000 Series is substantially similar to a Section of the NYSE American Company Guide.²⁷¹ Below is further detail.

- The BSTX Rule 26100 Series are based on the NYSE American Original Listing Requirements (Sections 101-146).²⁷²
- The BSTX Original Listing Procedures (26200 Series) are based on the NYSE American Original Listing Procedures (Sections 201 – 222).
- The BSTX Additional Listings Rules (26300 Series) are based on the NYSE American Additional Listings Sections (Sections 301- 350).
- The BSTX Disclosure Policies (26400 Series) are based on the NYSE American Disclosure Policies (Sections 401-404).

²⁷⁰ All references to various “Sections” in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

²⁷¹ The Exchange notes that while the numbering of BSTX’s Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (i.e., bonds, debentures, securities of foreign companies (other than Canadian companies), investment trusts, and securities such as equity-linked term notes). The Exchange also proposes to modify cross-references in the proposed Non-ETP Listing Rules to accord with its Rules.

²⁷² Pursuant to proposed Rule 26136, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q-1.

- The BSTX Dividends and Splits Rules (26500 Series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501-522).
- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 Series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603-624).
- The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 Series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701-726).²⁷³
- The BSTX Corporate Governance Rules (26800 Series) are based on the NYSE American Corporate Governance Sections (Sections 801-809).
- The BSTX Additional Matters Rules (26900 Series) are based on the NYSE American Additional Matters Sections (Sections 920-994).
- The BSTX Suspension and Delisting Rules (27000 Series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001-1011).
- The BSTX Guide to Filing Requirements (27100 Series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 Series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201-1211).

²⁷³ The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (e.g., proxy follow-up mailings) are the same as those charged by NYSE American. See e.g., proposed IM-26722-8 cf. NYSE American Section 722.80.

Notwithstanding that the proposed Rule 26000 and 27000 Series are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Rule 26000 and 27000 Series. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of these Rule Series by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁷⁴

With respect to initial listing standards for non-ETP Securities, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.²⁷⁵ The Exchange believes that

²⁷⁴ 15 U.S.C. 78f(b)(5).

²⁷⁵ See NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51-1. 17 CFR 240.3a51-1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as “penny stocks” and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51-1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million Securities, 400 public Security holders, and a minimum market price of \$4 per Security. These provisions meet the requirements in SEC Rule 3a51-1 and are consistent with the rules of other national securities exchanges. See e.g., Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter’s Letter that has been submitted as Exhibit 3L to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁷⁶ Market participants that are already familiar with NYSE American's listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred Securities.²⁷⁷ Specifically, the Exchange proposes an additional standard for preferred Securities to list on the Exchange based on NASDAQ Rule 5510.²⁷⁸ The Exchange believes a proposed rule providing an additional initial listing standard for preferred Securities consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred Securities. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving

²⁷⁶ 15 U.S.C. 78f(b)(5).

²⁷⁷ See proposed Rule 26103.

²⁷⁸ See proposed Rule 26103(b)(2). Preferred Security Distribution Standard 2 requires that a preferred Security listing satisfy the following conditions: minimum bid price of at least \$4 per Security; at least 10 Round Lot holders; at least 200,000 Publicly Held Securities; and Market Value of Publicly Held Securities of at least \$3.5 million.

issuers an additional means by which it could list a different type of security (i.e., a preferred Security) and investors the opportunity to trade in such preferred Securities.²⁷⁹ Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Non-ETP Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Non-ETP Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁸⁰

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.²⁸¹ The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

²⁷⁹ 15 U.S.C. 78f(b)(5).

²⁸⁰ Id.

²⁸¹ See Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.²⁸²

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.²⁸³ Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.²⁸⁴ Alternatively, a company may elect, or the Exchange may determine, that,

²⁸² 15 U.S.C. 78f(b)(5).

²⁸³ See proposed Rule 26205. BSTX-listed Securities must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all Securities listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) The DMM Requirement whereby a DMM must be assigned to a given Security; or (2) the Active Market Maker Requirement which states that (i) for initial inclusion the Security must have at least three registered and active Market Makers, and (ii) for continued listing, a Security must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

²⁸⁴ Exchange personnel responsible for managing the listing and onboarding process would be responsible for determining to which DMM a Security would be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each Security is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel would be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a "Listing Qualifications Analyst" that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a "Listing Qualifications Analyst," but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to relevant

in lieu of a DMM, a minimum of three (3) market makers would be assigned to the Security at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁸⁵ The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing.²⁸⁶ In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for Securities.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a “specialist,” since BSTX will not have a specialist,²⁸⁷ or references to certificated equities, since Securities will be uncertificated equities.²⁸⁸ As another example, NYSE

rules related to listing.

²⁸⁵ 15 U.S.C. 78f(b)(5).

²⁸⁶ See e.g., IEX Rule 14.206.

²⁸⁷ See e.g., NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

²⁸⁸ See e.g., NYSE American Section 117 including a clause relating to paired securities for which “the stock certificates of which are printed back-to-back on a single certificate”). Similarly, the Exchange has proposed to replace certain

American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.²⁸⁹ In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.²⁹⁰ In its proposed Rules, the Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;²⁹¹ instead, these forms will be included in

references to the “Office of General Counsel” contained in certain NYSE American Listing Rule (see e.g., Section 1205) with references to the Exchange’s “Legal Department” to accommodate differences in BSTX’s organizational structure. See proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange’s “Hearing Committee” as defined in Section 6.08 of the Exchange’s By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

²⁸⁹ See proposed Rule 26623.

²⁹⁰ Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX’s Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American’s corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (e.g., requiring that a member state the actual number of shares for which a proxy is given – NYSE American Rule 578) or, in some cases, relate to certificated securities (e.g., NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578-585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. See e.g., Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange’s other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants’ obligations with respect to proxies.

²⁹¹ The forms found in NYSE American Section 722.20 and 722.40 would be included in the BSTX Listing Supplement.

the BSTX Listing Supplement.²⁹² The Exchange is not proposing to adopt provisions relating to future priced securities at this time.²⁹³ In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,²⁹⁴ or to allow for issuers to transfer their existing securities to BSTX.²⁹⁵ Similarly, the

²⁹² The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has submitted as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM-26722-2 and IM-26722-4. The Exchange expects that these proposed materials in the BSTX Listing Supplement would be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

²⁹³ See e.g., NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of Securities. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. See e.g., IEX Listing Rules.

²⁹⁴ See proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of Securities, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers – e.g., NYSE American Section 801(f).

²⁹⁵ Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

Exchange is not proposing at this time to support debt securities (other than those that may be ETPs), so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities²⁹⁶ or the trading of units.²⁹⁷ The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (e.g., by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.²⁹⁸

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional Securities and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in Securities.²⁹⁹ The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national

²⁹⁶ See e.g., NYSE American Sections 1003(b)(iv) and (e).

²⁹⁷ See e.g., NYSE American Sections 106(f), 401(i), and 1003(g).

²⁹⁸ 15 U.S.C. 78f(b)(5).

²⁹⁹ The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in Securities are not permitted by the Exchange.

market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁰⁰

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's Security is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that Security trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁰¹

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 Series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve³⁰² and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.³⁰³ The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-backed securities and foreign issues (other than those from

³⁰⁰ 15 U.S.C. 78f(b)(5).

³⁰¹ Id.

³⁰² See proposed Rule 26802(d).

³⁰³ See proposed Rule 26801(b).

Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 Series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since Securities listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 Series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.³⁰⁴

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the differences in the proposals compared to the analogous

³⁰⁴ As with all sections of the proposed rules, references to “securities” have been changed to “Securities” where appropriate and, in the Rule 27000 Series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.³⁰⁵

Trading and Listing Rules for Exchange-Trade Products (Rule 28000 Series)

The Exchange proposes as the Rule 28000 Series rules related to trading and listing ETPs. These proposed Rules allow for an array of different types of ETPs to be traded and listed on the Exchange and would provide individuals and institutions with diverse range of products in which to invest. The proposed Rules would set forth requirements and initial as well as continued listing standards for a variety of ETPs noted in the bulleted list below. The proposed Rules have been adapted from, and are substantially similar to, rules found in the NYSE Arca Inc. ("NYSE Arca") rulebook. Below is a list of the proposed Rules in the 28000 Series and the NYSE Arca rules on which it is based:

- Proposed Rule 28000 (Investment Company Units) is based on NYSE Arca Rule 5.2-E(j)(3)
- Proposed Rule 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked

³⁰⁵ 15 U.S.C. 78f(b)(5).

Securities, Futures-Linked Securities and Multifactor Index-Linked

Securities) is based on NYSE Arca Rule 5.2-E(j)(6)

- Proposed Rule 28002 (Exchange-Traded Fund Shares) is based on NYSE Arca Rule 5.2-E(j)(8)
- Proposed Rule 28003 (Trust Issued Receipts) is based on NYSE Arca Rule 8.200-E
- Proposed Rule 28004 (Commodity-Based Trust Shares) is based on NYSE Arca Rule 8.201-E
- Proposed Rule 28005 (Managed Fund Shares) is based on NYSE Arca Rule 8.600-E
- Proposed Rule 28006 (Active Proxy Portfolio Shares) is based on NYSE Arca Rule 8.601-E
- Proposed Rule 28007 (Managed Portfolio Shares) is based on NYSE Arca Rule 8.900-E

For each Rule in the 28000 Series, the Exchange proposes provisions that are substantially similar to provisions in the NYSE Arca rulebook, with adjustments made to ensure appropriate reference to concepts in other parts of the BSTX Rulebook. For example, in cases where the precedent NYSE Arca rule referred to a specific provision regarding delisting procedures, the Exchange has modified the proposed Rules to reference to the proposed Rule 27000 Series, which set forth the Exchange’s proposed Rules governing suspension and delisting.³⁰⁶ As another example, the proposed

³⁰⁶ As another example, the concept of “Core Trading Hours” in the NYSE Arca Rulebook (as defined therein) has no analog in the BSTX Rulebook. The BSTX Rulebook only allows for Regular Trading Hours and thus the proposal references

definition of “ETP Holder,” which closely parallels the same definition in the NYSE Arca Rulebook, but is located in a different place in the proposed BSTX Rulebook as compared to the NYSE Arca rulebook.³⁰⁷ In addition, certain products or concepts that are supported by NYSE Arca but are not supported by the Exchange have not been included in the proposal. For example, the Exchange notes that the NYSE Arca rulebook provides for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares,³⁰⁸ whereas the Exchange will not support trading in these specific ETPs and therefore has not included provisions relating to the listing and trading of such products in its proposal. The discussion below describes other notable variations from the NYSE Arca rules set forth in the proposed Rule Series 28000.

The Exchange believes that the proposals in the Rule 28000 Series help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general promote the protecting of investors and the public interest because they will facilitate an additional exchange on which ETPs can be listed and traded. This adds competition to the marketplace for the listing of ETPs, providing greater choice for issuers of ETPs and an additional trading venue on which market participants can trade such products. As noted, the proposed Rule 28000 Series is substantially similar to the rules of NYSE Arca relating to ETPs, with only non-substantive differences, which differences appropriately reflect the differences between

the concept of Regular Trading Hours.

³⁰⁷ See proposed IM-28000-1g. In the NYSE Arca rule book, the comparable definition is set forth in NYSE Arca Rulebook Rule 1.

³⁰⁸ Specifically, Section 2 of Rule 8-E in the NYSE Arca rulebook allows for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares.

the two exchanges (e.g., internal cross-references within each rule book or excluding provisions related to products that the Exchange will not support).

Fees (Rule 29000 Series)

The Exchange proposes to set forth as its Rule 29000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate. As provided in proposed Rule 29000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.³⁰⁹ Proposed Rule 29010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 29000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 29000 Series (Fees) is also consistent with Sections 6(b)(3) of the

³⁰⁹ Proposed Rule 29000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

Exchange Act³¹⁰ because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange's facilities. The Exchange notes that the proposed Rule 29000 Series is substantially similar to the existing rules of another exchange.³¹¹ The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to "minor rule violations," are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan ("MRVP") specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Exchange Act³¹² requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.³¹³ The

³¹⁰ 15 U.S.C. 78f(b)(5).

³¹¹ See Cboe BZX Rules 15.1 and 15.2.

³¹² 17 CFR 240.19d-1(c)(1).

³¹³ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered "final" for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.³¹⁴ Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,³¹⁵ which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for

³¹⁴ See e.g., IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

³¹⁵ 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.³¹⁶

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d-1(c)(2) under the Exchange Act,³¹⁷ because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in Securities= [sic] on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading

³¹⁶ 15 U.S.C. 78f(b)(7).

³¹⁷ 17 CFR 240.19d-1(c)(2).

in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B submitted with the proposal:

- Rule 100(a) (Definitions) “Options Participant” or “Participant”: The Exchange proposes to change the definition of “Options Participant or Participant” to “Participant” to reflect Options Participants and BSTX Participants and to amend the definition as follows: “The term ‘Participant’ means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an ‘Options Participant’ and ‘BSTX Participant.’”
- Rule 100(a) (Definitions) “Options Participant”: The Exchange proposes to add a definition of “Options Participant” that would be defined as follows: “The term ‘Options Participant’ is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.”³¹⁸
- Rule 2020(g)(2) (Participant Eligibility and Registration): The Exchange proposes to delete subsection (g)(2) and replace it with the following: “(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures

³¹⁸ In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetically order.

association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.”³¹⁹

- Rule 2060 (Revocation of Participant Status or Association with a Participant): The Exchange proposes to amend Rule 2060 to refer to “securities transactions” rather than “options securities transactions.”
- Rule 3180(a) (Mandatory Systems Testing): The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.
- Rule 7130(a)(2)(v) Execution and Price/Time Priority: The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term “Request for Quote” or “RFQ” under the Rules after the proposed renumbering.
- Rule 7150(a)(2) (Price Improvement Period): The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.
- Rule 7230 (Limitation of Liability): The Exchange proposes to amend the references in Rule 7230 to “Options Participants” to simply “Participants.”

³¹⁹ In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. See e.g., IEX Rule 2.160(m).

- Rule 7245(a)(4) (Complex Order Price Improve Period): The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term “Professional” after the proposed renumbering.
- IM-8050-3: The Exchange proposes to update the cross reference to Rule 100(a)(56) to refer to Rule 100(a)(57), which defines the term “quote” or “quotation” after the proposed renumbering.
- Rule 11010(a) “Investigation Following Suspension”: The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to “in BOX options contracts” and to modify the word “position” with the word “security” as follows: “. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.”
- Rule 11030 (Failure to Obtain Reinstatement): The Exchange proposes to amend Rule 11030 to replace the reference to “Options Participant” to simply “Participant.”
- Rule 12140 (Imposition of Fines for Minor Rule Violations): The Exchange proposes to amend Rule 12140 to replace references to “Options Participant” to simply “Participant.” In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange’s MRVP. New paragraph (f) of Rule 12140 would provide: “(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).”

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act³²⁰ because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act³²¹ because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments

³²⁰ 15 U.S.C. 78f(b)(5).

³²¹ Id.

to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

Forms to Be Used in Connection with BSTX

In connection with the operation of BSTX, the Exchange proposes to use a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their Securities. These forms have been submitted with the proposal as Exhibits 3A – 3L. Each are described below.

BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which has been submitted with the proposal as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicant's name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository ("CRD") number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant's current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker.

Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant's trading representatives (including a copy of each representative's Form U4), a copy of the applicant's written supervisory procedures relating to market making, a description of the source and amount of the applicant's capital, and information regarding the applicant's other business activities and information barrier procedures.

BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement has been submitted with the proposal as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.
2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.
3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, submitted with the proposal as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (boxoptions.com).

BSTX Security Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Designated Market Maker Selection Form, which has been submitted with the proposal as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (submitted with the proposal as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (submitted with the proposal as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the

Exchange, as applicable (collectively, “listing documentation”). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of Securities. All listing documentation will be available on the Exchange’s website (boxoptions.com). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b-4.³²²

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (submitted with the proposal as Exhibit 3G) or the BSTX Additional Listing Application (submitted with the proposal as Exhibit 3H) to apply for the listing of Securities on BSTX.³²³ The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,³²⁴ for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of Securities. Relevant factors regarding the company and securities to be listed would

³²² The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

³²³ Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its Security must also provide a legal opinion that the applicant’s Security is a security under applicable United States securities laws.

³²⁴ 15 U.S.C. 78l(b).

determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.
2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.
3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of Securities outstanding or offered, total Securities unissued, but reserved for issuance, date authorized, purpose of Securities to be issued, number of Securities authorized, and information relating to

payment of dividends. This information is required of all applicants listing Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.
5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.
6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.
7. For original listing applications only, type of Security listing, including the type of transaction (initial public offering of a Security, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other

details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any Security and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's Security inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.
9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the

aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).
11. For additional listing applications only, transaction details, including the purpose of the issuance, total Securities, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.
12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any Securities in the future above the amount they are currently applying for. This information is required of all applicants listing additional Securities on the

Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse Security splits and changes in states of incorporation. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.
14. For additional listing applications only, information for a forward Security split or Security dividend, including forward Security split ratios and information related to Security dividends. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order to determine the rights associated with the Securities.
15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.
16. For additional listing applications only, reconciliation for technical original listing, including Securities issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

Checklist for Original Listing Application

In order to assist issuers seeking to list its Securities on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, submitted with the proposal as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, underwriter's letter (for an initial public offering of a Security only) and relevant SEC filings (e.g., 8-A, 10, 40-F, 20-F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

BSTX Security Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Market Listing Agreement (the "Listing Agreement"), which has been submitted with this proposal as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.
2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed Securities or in the rights, benefits, and privileges of the holders of such Securities.
3. Company understands that the Exchange may remove its Securities from listing on the BSTX Security Market, pursuant to applicable procedures, if it

fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.
5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange ("Corporations") of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.
6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The

Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.
8. Company agrees to pay when due all fees associated with its listing of Securities on the BSTX Security Market, in accordance with the Exchange's Rules.
9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1-3 and 6-8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

BSTX Security Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Market Corporate Governance Affirmation, submitted with this proposal as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a Security must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and submitted with this proposal as Exhibit 3L, is necessary to assist the Exchange's regulatory staff in

assessing the offering's compliance with BSTX listing standards for an initial public offering of a Security.

Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.³²⁵ Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform Security listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of Security trading on the BSTX System.

Section 17(d) of the Exchange Act³²⁶ and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d-1,³²⁷ the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.³²⁸

³²⁵ 15 U.S.C. 78f.

³²⁶ 15 U.S.C. 78q(d).

³²⁷ 17 CFR 240.17d-1.

³²⁸ See Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

Rule 17d-2 under the Exchange Act³²⁹ permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (“common members”). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.³³⁰ The Exchange may choose to join certain Rule 17d-2 agreements such as the agreement allocating responsibility for insider trading rules.³³¹

For those regulatory responsibilities that fall outside the scope of any Rule 17d-2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange’s options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange’s existing regulatory

³²⁹ 17 CFR 240.17d-2.

³³⁰ Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

³³¹ Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating "clearly erroneous trades" pursuant to proposed Rule 25110.

NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plan(s) for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,³³² the Exchange believes that joining the same set of NMS plans that all other national

³³² 15 U.S.C. 78f(b)(5).

securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,³³³ in general and with Section 6(b)(5) of the Exchange Act,³³⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. BSTX would also make available to BSTX Participants the BSTX Market Data Blockchain, which provides certain order and transaction information with respect to a BSTX Participant's trading activity on BSTX,

³³³ 15 U.S.C. 78a et seq.

³³⁴ 15 U.S.C. 78f(b)(5).

as well as anonymized order and transaction data with respect to all trading activity occurring on BSTX. The Exchange believes that the content of information available on the BSTX Market Data Blockchain would generally be similar to TAQ data made available by NYSE today, except that (i) the BSTX Market Data Blockchain would use a private, permissioned network controlled by the Exchange to make the market data available to BSTX Participants; (ii) a BSTX Participant would be able to certain see non-anonymized information about its own trading activity on BSTX;³³⁵ and (iii) the BSTX Market Data Blockchain would include market data only with respect to trading activity occurring on BSTX, while the Exchange understands that TAQ data includes certain trading and quotation data that may occur on other markets.³³⁶ The Exchange believes that the use of blockchain technology, through a private permissioned network that operates in manner that is fully compatible with the existing regulatory structures for trading, recordkeeping, and clearance and settlement that market participants are familiar with is an appropriate way to introduce blockchain to the current market structure. BSTX Participants would have not have affirmative obligations to provide information to the blockchain nor would they be required to access or use it. The data inputs to the BSTX Market Data Blockchain would be captured in the ordinary course as BSTX Participants' orders and messages are sent to the Exchange through the FIX gateway. The BSTX

³³⁵ All non-anonymized information would be available only to the BSTX Participant who provided such information to the Exchange through its trading activity on BSTX.

³³⁶ See e.g., NYSE, Daily TAQ Fact Sheet, (noting that TAQ data “provides users access to all trades and quotes for all issues traded on NYSE, Nasdaq and the regional exchanges for a single trading day” and is “a comprehensive history of daily activity from NYSE markets and the U.S. Consolidated Tape covering U.S. Equities instruments (CTA and UTP participating markets)”) https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

Market Data Blockchain, therefore, would be optional functionality available to all BSTX Participants on equal terms, and therefore is not unfairly discriminatory, consistent with Section 6(b)(5) of the Exchange Act.³³⁷

The Exchange has proposed to make the BSTX Market Data Blockchain available only to BSTX Participants rather than other market participants that are not BSTX Participants primarily because the Exchange believes that BSTX Participants would be the most likely to be interested in potentially using the BSTX Market Data Blockchain. The BSTX Market Data Blockchain would consist of information that pertains solely to trading activity on BSTX and not other exchanges. The Exchange believes, therefore, that most persons interested in market data relating to trading on BSTX would likely become a BSTX Participant, at which time they would have access to the BSTX Market Data Blockchain. The Exchange solicits comment from the public as to whether non-BSTX Participants would be interested in having access to the BSTX Market Data Blockchain and the anticipated uses of the BSTX Market Data Blockchain by such non-BSTX Participants.³³⁸ To the extent that non-BSTX Participants are interested in access to General Market Data (i.e., anonymized market data) available on the BSTX Market Data Blockchain, the Exchange would consider providing access to such persons on an ad hoc basis³³⁹ or may consider amendments to the proposal (or subsequent rule filings) to provide regular access to General Market Data on the BSTX Market Data Blockchain if

³³⁷ 15 U.S.C. 78f(b)(5).

³³⁸ The Exchange reiterates that non-anonymized market data available on the BSTX Market Data Blockchain would only ever be accessible by the BSTX Participant who provided such market data through its trading on BSTX.

³³⁹ For example, the Exchange might provide temporary access to the BSTX Market Data Blockchain to academics studying equity markets.

there is sufficient interest or demand from non-BSTX Participants. The Exchange notes that the anonymized data that would be available on the BSTX Market Data Blockchain would be the same information that would be available through the Exchange's proprietary market data feeds, which any person (i.e., both BSTX Participants and non-BSTX Participants) would be able to acquire. Accordingly, under the proposal, non-BSTX Participants would still be able to access the same anonymized market data information available on the BSTX Market Data Blockchain as BSTX Participants, but through a different means (i.e., through the proprietary market data feeds rather than via the BSTX Market Data Blockchain). Because the same anonymized information would be available to non-BSTX Participants through another means, the Exchange believes that the proposed limitation of access to the BSTX Market Data Blockchain is not unfairly discriminatory and does not impose a burden on competition, consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act.³⁴⁰

In addition, because the BSTX Market Data Blockchain only captures information with respect to trading activity on BSTX, it would have no effect or impact on other exchanges, promoting consistency with Section 6(b)(8) of the Exchange Act, which prohibits an exchange's rules from imposing a burden on competition not necessary or appropriate in furtherance of the Exchange Act.³⁴¹ The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with

³⁴⁰ 15 U.S.C. 78f(b)(5) and (8).

³⁴¹ 15 U.S.C. 78f(b)(8).

securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of Securities using a price-time priority model and the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an additional feature in connection with Securities traded on the Exchange.

In connection with the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency, the Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.³⁴² Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail above, however, an Order with a T+0 Preference or an Order with a T+1 Preference would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing

³⁴² See proposed Rule 25060(h).

agency.³⁴³ Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.

The Exchange believes that the proposed ability for BSTX Participants to indicate a preference for shorter settlement times as described above is consistent with the Exchange Act and in particular Section 6(b)(5) of the Exchange Act because it would help remove impediments to and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between or among market participants.³⁴⁴ Specifically, allowing for BSTX Participants to potentially reduce the settlement time for transactions on BSTX pursuant to the rules, policies and procedures of a registered clearing agency helps remove impediments to and perfects a free an open market by allowing greater choice for BSTX Participants who may want to avail themselves of currently available functionality at registered clearing agencies. Moreover, the Commission has previously noted a number of positive effects relating to the liquidity risks and costs faced by members in a clearing agency, and the Exchange believes that this proposed functionality on BSTX would help realize such positive effects.³⁴⁵ Proposed Rule 25060(h) is not designed to permit unfair discrimination between market participants consistent with Section 6(b)(5)³⁴⁶ because the Rule would allow all orders that are marketable against one another—regardless of the settlement preference of the

³⁴³ See proposed Rule 25100(d).

³⁴⁴ 15 U.S.C. 78f(b)(5).

³⁴⁵ See supra notes 888-91 and accompanying text.

³⁴⁶ 15 U.S.C. 78f(b)(5).

BSTX Participant submitting the order (or their customer)—to execute against each other. A BSTX Participant that would like settlement of T+2 could still interact with orders on BSTX that indicate a preference for a shorter settlement cycle and vice-versa. Only where two orders that both indicate a preference for a shorter settlement cycle match on BSTX would a shorter settlement cycle be possible.

The Exchange also proposes to suspend unlisted trading privileges for Securities that qualify as Thinly Traded Securities, which the Exchange also believes is consistent with the Exchange Act for the reasons detailed in Part II.H above.³⁴⁷ The Exchange proposes to suspend UTP only for Securities that qualify as Thinly Traded Securities, which are generally those with an ADV of trading of 100,000 or less and a market capitalization of less than \$1 billion, and where an issuer of a Thinly Traded Security elects to have UTP suspended. The Exchange believes that the proposed suspension of UTP is consistent with Section 6(b)(5) of the Exchange Act³⁴⁸ because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by concentrating displayed liquidity on a single exchange, which many, including the Commission, have suggested could potentially improve the market quality for thinly traded securities. The Exchange believes that concentrating displayed liquidity on a single venue could make market making more attractive in Thinly Traded Securities, thereby increasing the overall amount and depth of liquidity in the market and in turn making it easier for investors to acquire and dispose of positions in Thinly Traded

³⁴⁷ See supra notes 71-76 and accompanying text.

³⁴⁸ 15 U.S.C. 78f(b)(5).

Securities, which furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁴⁹ The Exchange would make available order and transaction data relating to Thinly Traded Securities to regulators, academics, and others upon request to evaluate how the suspension of UTP has impacted Thinly Traded Securities. The Exchange will also perform its own analysis across a range of market quality metrics to evaluate whether the suspension of UTP has had the intended effect of improving market quality for Thinly Traded Securities.³⁵⁰ The Exchange believes that by studying the effect of the suspension of UTP for Thinly Traded Securities and making available market data for others to make similar studies, the Exchange can help ensure that the suspension of UTP is in fact having the intended effect of improving market quality for Thinly Traded Securities and/or determine what else might be necessary to improve market quality, all of which the Exchange believes will help further the protection of investors and the public interest.

Similarly, consistent the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange

³⁴⁹ Id.

³⁵⁰ See Part II.H.5.

believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.³⁵¹

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁵² The Exchange operates in an intensely competitive global marketplace for transaction services. The Exchange competes for the privilege of providing market services to broker-dealers through the Exchange's service offerings and associated benefits it is able to provide. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to market participants who evaluate the Exchange on,

³⁵¹ Commission Statement on Thinly Traded Securities at 56956.

³⁵² 15 U.S.C. 78f(b)(8).

among other things, speed, reliability, the likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change could potentially result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants may access BSTX as a facility of the Exchange and use its services including the BSTX Market Data Blockchain, (3) Security transactions may be cleared and settled, (4) Security transactions would occur OTC (5) Security transactions would occur on other exchanges through an extension of UTP to Securities that are not Thinly Traded Securities; and (6) there would be a suspension of UTP for Thinly Traded Securities.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Non-ETP Listing Rules in the 26000 Series and Suspension and Delisting Rules in the 27000 Series that affect issuers and their ability to list Securities for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Trading and Listing of ETPs Rules in the 28000 Series that concern issuers and their ability to list Securities that are exchange-traded products are based substantially on the current rules of NYSE Arca. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series);

business conduct for BSTX participants (Rule 19000 Series); financial and operational rules for BSTX participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 [sic] Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC.

Regarding consideration (2) and use of the BSTX Market Data Blockchain, the terms on which BSTX would operate the BSTX Market Data Blockchain under Rule 17020 would apply equally to all BSTX Participants and would therefore not impose any different burden on one BSTX Participant compared to another. As described in detail in Item 3, BSTX would issue login credentials to each BSTX Participant through which the BSTX Participant may choose to access the BSTX Market Data Blockchain. Accessing the BSTX Market Data Blockchain would not be required. If a Participant chooses to do so, it would be able to see its order and transaction information on BSTX as well as certain anonymized General Market Data from other BSTX Participants. Because the General Market Data would be anonymized, the Exchange believes that there would not be cause for concern regarding potential trading information leakage or the ability for a BSTX Participant to reverse engineer another BSTX Participant's trading strategies. Moreover, the BSTX Market Data Blockchain would not require any affirmative action on the part of a BSTX Participant for its information to be recorded to the BSTX Market

Data Blockchain. Rather the Exchange would control all aspects of the BSTX Market Data Blockchain as a private, permission-based blockchain accessible to BSTX Participants, and the BSTX Market Data Blockchain would capture order and execution activity that occurs in the normal course on BSTX and is made available to BSTX Participants as an additional resource that they may use in their discretion. The BSTX Market Data Blockchain would functionally provide market data similarly to what NYSE offers through TAQ data, but would simply provide it using distributed ledger technology. Accordingly, although capturing a different set of market data than captured by NYSE TAQ data, the BSTX Market Data Blockchain is pro-competitive by offering a similar type of market data and using an innovative technology to do so. For these reasons, the Exchange believes that the BSTX Market Data Blockchain would not impose any burden on competition.

In addition to not imposing any burden on competition, the Exchange believes that the BSTX Market Data Blockchain would provide two primary benefits to BSTX Participants. First, the Exchange believes that BSTX Participants that choose to access the BSTX Market Data Blockchain may find the information useful as a focused source of market data regarding order and transaction information on BSTX.³⁵³ Second, the Exchange believes that the BSTX Market Data Blockchain would help familiarize BSTX Participants that access the market data with the capabilities of blockchain technology in a manner that does not impose any burden on competition on them or others. The Commission has stated that it is “mindful of the benefits of increasing use of new

³⁵³ For example, a BSTX Participant may wish to use the market data to review its trading activity on BSTX, determine what the market quality was at a particular time for a given Security or to evaluate execution quality on BSTX.

technologies for investors and the markets, and has encouraged experimentation and innovation . . .” stating further that “[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.”³⁵⁴ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that “[t]he market will ultimately prove the worth of technology – whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.”³⁵⁵ Consistent with these statements, the Exchange believes that promoting use of the functionality of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and thereby advances and protects the public’s interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.³⁵⁶

Regarding consideration (3) and the manner in which Security transactions may be cleared and settled, the Exchange proposes under BSTX Rule 25100(d) to clear and settle transactions in Securities in accordance with the rules, policies and procedures of a registered clearing agency. The Exchange believes that this is consistent with how other exchange-listed equity securities are cleared and settled today. Therefore, BSTX’s rules regarding clearance and settlement of Security transactions do not impose any relative

³⁵⁴ See supra n. 366-38 and accompanying text.

³⁵⁵ Id.

³⁵⁶ See supra n. 39 and accompanying text.

burden on competition regarding the manner in which trades may be cleared and settled because market participants would be able to clear and settle Security transactions in the same manner as they already do in other types of NMS stock. The Exchange believes that this is equally true regarding the proposed ability of BSTX Participants to submit to BSTX orders in Securities in which they include a parameter expressing a preference for T+1 or T+0 settlement, consistent with the rules, policies and procedures of a registered clearing agency, as proposed in the operation of proposed BSTX Rules 25060(h) and 25100(d). As described in detail in Item 3 above, BSTX believes that NSCC and DTC already have authority under their rules policies and procedures to clear and settle certain trades on a T+1 or T+0 basis and that these clearing agencies do already clear and settle trades in accordance with this authority.

The Exchange believes that answering the question of whether a burden on competition is imposed by the proposal to allow BSTX Participants to specify an order parameter indicating a preference for potential settlement on a T+0 or T+1 basis requires an assessment under three general circumstances for order submissions and executions. The first possible circumstance contemplates orders that BSTX Participants would submit to the BSTX System and that would result in an execution on BSTX. Here, it would be entirely the choice of any BSTX Participant regarding whether to include an order parameter indicating a preference for T+0 or T+1 settlement where possible under the settlement logic in BSTX Rule 25060(h). If no such additional parameter is included in the order, the order defaults to settle on a regular-way T+2 basis under the settlement logic in proposed BSTX Rule 25060(h). As described in Part II.I of Item 3, an order that includes a parameter indicating a preference for potential T+0 settlement will execute

against any order against which it is marketable with settlement occurring on a regular-way settlement cycle of T+2 except where: (i) The order with the parameter for potential settlement on T+0 executes against another order with a parameter for potential settlement on T+0 (in which case settlement would occur on the trade date if the transaction is also eligible for settlement on T+0 under the rules, policies and procedures of a registered clearing agency) or (ii) the order with a parameter for potential settlement on T+0 executes against an order with a parameter for potential settlement on T+1 (in which case settlement would occur T+1). Similarly, as proposed, an order that includes a parameter for potential settlement on T+1 will execute against any order against which it is marketable with settlement occurring on a regular-way settlement date of T+2 except where: (i) An order that includes a parameter for potential settlement on T+1 executes against another such order or an order that includes a parameter for potential settlement on T+0 (in which case settlement would occur T+1). In all cases under the settlement logic in proposed BSTX Rule 25060(h), an order that does not include an optional parameter indicating a preference for potential settlement on T+0 or T+1 would be a regular way order that would always receive T+2 settlement if it executes against any other order in the BSTX System. In this way, all of the orders submitted to BSTX would be regular way orders that in and of themselves would be presumed to settle on T+2. Only where a BSTX Participant includes the optional parameters to express a preference for potential T+0 or T+1 settlement (where consistent with the rules, policies and procedures of a registered clearing agency) and the order matches against another order seeking a shorter settlement time than T+2 could a transaction settle more quickly than T+2 under the settlement logic in proposed BSTX Rule 25060(h) and as described

immediately above. Thus, every market participant seeking T+2 settlement for an execution on BSTX would be able to interact with any order against which their order is marketable, including those marked for possible T+0 or T+1 settlement. In addition, the possibility of shortened settlement timing would have no impact on the Exchange's price time priority.³⁵⁷ For these reasons, the Exchange believes that no burden on competition is imposed in this first possible circumstance.

The second possible circumstance arises when an order that would be required under Exchange Act Rule 611,³⁵⁸ the Commission's "order protection rule", to be routed to BSTX from a third party exchange that extends UTP to a Security. This required routing of the order in such a Security would occur in this setting because the NBBO existed on BSTX at the time of the entry of the order. Under proposed BSTX Rule 25060(h), the order routed to BSTX would execute against any order against which it is marketable without regard to whether a BSTX Participant may have included an optional parameter for potential T+0 or T+1 settlement where the order executes against another order that also has an optional parameter for potential T+0 or T+1 settlement under the settlement logic in BSTX Rule 25060(h). In the event the order routed to BSTX executes against another order on BSTX against which it is marketable, that executed transaction in the Security would be bound for regular way T+2 settlement under BSTX Rule 25060(h) because the Exchange believes that the routed order from a third party exchange would not include a parameter for T+0 or T+1 settlement. This is because the Exchange believes that no other exchange currently includes any such optional

³⁵⁷ See supra n. 82 and accompanying text.

³⁵⁸ 17 CFR 242.611.

parameters to be able to indicate a preference for potential T+0 or T+1 settlement. This structure means that any non-BSTX Participant that sees a quote in a Security on BSTX would remain able to execute against that quote even if that quote includes an optional parameter indicating a preference for T+0 or T+1 settlement where an executed order becomes eligible for any such settlement on a basis that is faster than T+2 under the settlement logic in BSTX Rule 25060(h). The Exchange believes that no burden on competition results in this second possible circumstance because an order routed to BSTX would interact against any order on BSTX against which it is marketable. All orders in a Security that are submitted directly to BSTX by BSTX Participants or that may be routed to BSTX would be regular way orders that when viewed in isolation would be presumed to settle on a T+2 basis at the time of order entry. It would only be upon execution against another order that also includes an order parameter expressing a preference for settlement on a T+0 or T+1 basis that the executed transaction (i.e., not the initial orders) would become eligible for settlement faster than T+2 under the settlement logic in Rule 25060(h). The Exchange believes this imposes no burden on competition on BSTX Participants because inclusion of any T+0 or T+1 parameter would be entirely optional and any BSTX Participant that includes such a parameter would do so with an ex-ante understanding of the settlement logic in BSTX Rule 25060 that could cause an executed transaction to settle more quickly than T+2. As noted, the Exchange believes that orders in a Security that would be required to be routed to BSTX, for example under the Commission's Order Protection Rule, would also not impose any burden on competition because other exchanges do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2

settlement if executed against any other order on BSTX against which the order is marketable (regardless of whether the order against which it executes includes an optional parameter indicating a preference for T+0 or T+1 settlement). Therefore, any order routed to BSTX would be able to interact with any other order on BSTX against which it is marketable and would settle on a regular way T+2 basis just as occurs today regarding any order in an NMS stock that is routed to a national securities exchange.

The third possible circumstance contemplates an order that must be routed under the order protection rule from BSTX to a third party exchange that extends UTP for a Security because the third party exchange has the NBBO at that time. The Exchange believes that this setting is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that it is not relevant because proposed BSTX Rule 25130(d) states that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry. Therefore, any such orders that would otherwise be required to be routed by BSTX to another exchange will instead be rejected by the BSTX System. Accordingly, any specification by a BSTX Participant of a T+0 or T+1 settlement timing parameter for an order in this setting could not create any burden on competition because the order will be rejected and would never lead to an execution.

In addition to not imposing any burden on competition, the Exchange believes that allowing BSTX Participants to use faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities, consistent with the benefits the Commission has noted in this area. Namely, in adopting amendments to SEC Rule 15c6-1 in 2017 to

shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs CCP services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”³⁵⁹ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]”³⁶⁰ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”³⁶¹ The Exchange agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of shorter settlement cycles for Securities without

³⁵⁹ See supra n. 88-91 and accompanying text.

³⁶⁰ Id.

³⁶¹ Id.

imposing burdens on other national securities exchanges or market participants that are not BSTX Participants.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade Securities OTC because Securities could be traded OTC, including Thinly Traded Securities for which UTP has been suspended, and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will take place in the same manner as for other NMS stocks.

With respect to consideration (5) noted above regarding other exchanges extending UTP to Securities that are not Thinly Traded Securities (and for which the issuer elected to suspend UTP), the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This is because, with the exception of Thinly Traded Securities described below, other national securities exchanges would be able to extend UTP to Securities in accordance with Commission rules just as they can regarding any other NMS stock.

Regarding consideration (6) and suspensions of UTP for Thinly Traded Securities, the Exchange believes that proposed BSTX Rule 25150 would impose a burden on competition as described below. However, for the reasons described below the Exchange believes that the degree of the burden on competition is justified under the

Exchange Act because it is necessary and appropriate to promote other express objectives of the Exchange Act.

If an operating company that is an issuer of a Security gives written notice to the Exchange under BSTX Rule 25150(b) that it elects a suspension of UTP and the Exchange determines that the Security qualifies as a Thinly Traded Security, the Thinly Traded Security would be eligible to trade only on BSTX and OTC while the suspension of UTP is in effect. This would burden competition regarding other national securities exchanges for the time that the suspension of UTP is in effect because it would mean that the exchanges would not be permitted to extend UTP to the Thinly Traded Security and therefore the Thinly Traded Security would only trade on BSTX and OTC. The Exchange believes, however, that this burden on other exchanges is appropriately limited to the subset of Securities that are Thinly Traded Securities because it would only apply (i) in the event that the Security meets the average daily trading volume thresholds in BSTX Rule 25150 and (ii) the issuer elects to notify the Exchange in writing that it wishes to suspend UTP. Therefore, the burden on other exchanges would never apply regarding a Security that is not a Thinly Traded Security.

As also described in Item 3, Part II.H, the Exchange believes that this limited burden on other exchanges would be offset and necessary and appropriate under Section 6(b)(8) of the Exchange Act³⁶² because the suspension of UTP has the potential to help solve market quality problems for Thinly Traded Securities that have been publicly identified by the Commission, Commission staff, the U.S. Department of Treasury,

³⁶² 15 U.S.C. 78f(b)(8).

academics, and a broad spectrum of market participants.³⁶³ The Exchange agrees with the views expressed in the related publications that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities”³⁶⁴ and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.”³⁶⁵ The Commission noted that the “secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.”³⁶⁶ These concerns have been echoed in statements by former Commission Chairman Jay Clayton, former Director of the Division of Trading and Market Brett Redfearn, the Commission’s Small Business Advisory Committee and demonstrated through empirical analyses by the Division of Trading and Market’s Office of Analytics and Research (OAR) and academics.³⁶⁷ A frequently discussed potential solution to these liquidity and poor market quality issues facing thinly traded securities has been the suspension of UTP for such securities, allowing for displayed liquidity to be concentrated on a single exchange.³⁶⁸ The Exchange has thus proposed the suspension of UTP in response to these concerns. The

³⁶³ See supra n. 42-50 and accompanying text.

³⁶⁴ Id.

³⁶⁵ Id.

³⁶⁶ Id.

³⁶⁷ Id.

³⁶⁸ See supra note 51-52.

Exchange notes that it proposes to use the same criteria as used by OAR (i.e., an ADV of less than 100,000 shares)³⁶⁹ to distinguish thinly traded securities from more actively traded securities with the additional conditions that only the Securities of an operating company and must have a market capitalization of less than \$1 billion, which the Exchange believes helps ensure that the competitive burden imposed by the proposed suspension of UTP is narrowly tailored to address liquidity and market quality concerns for securities that are thinly traded.³⁷⁰ It is for these reasons that the Exchange believes that the burden on competition through the suspension of UTP for Thinly Traded Securities (at the election of the issuer) is justified in furtherance of goal of improving market quality for securities that are thinly traded.

In addition, the Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act³⁷¹ because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities

³⁶⁹ See supra note 56 noting the immaterial difference between the construction used by OAR of an ADV of less than 100,000 shares versus the Exchange's proposed construction of an ADV of 100,000 shares or less.

³⁷⁰ In addition, the Exchange proposes to work with other SROs to amend the revenue allocation formula of the applicable NMS plan(s) for consolidated market data to exclude Thinly Traded Securities in order to prevent the Exchange from unduly profiting from the suspension of UTP under such formula. See supra notes 70-71 and accompanying text.

³⁷¹ 15 U.S.C. 78f(b)(8).

could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or \$1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the *Federal Register* or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2021-06 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2021-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2021-06 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷²

J. Matthew DeLesDernier,

Assistant Secretary.

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³⁷² 17 CFR 200.30-3(a)(12).